

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,
v. 18 Cr. 319 (SHS)
CHRISTIAN PABON,
Defendant.

-----x Trial
New York, N.Y.
May 10, 2022
9:25 a.m.

Before:

HON. SIDNEY H. STEIN,
District Judge
and a Jury

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: ADAM S. HOBSON
RUSHMI BHASKARAN
ELIZABETH A. ESPINOSA
Assistant United States Attorneys

ELIZABETH E. MACEDONIO, P.C.
Attorneys for Defendant
BY: ELIZABETH E. MACEDONIO

ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP
Attorneys for Defendant
BY: JEREMY SCHNEIDER

Also Present: Emily Abrams, Paralegal Specialist, USAO
Dylan Schneider, Defense Paralegal

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(Trial resumed; jury not present)

THE COURT: My deputy informed me there are issues.

MR. SCHNEIDER: Yes, your Honor.

THE COURT: What's the issue.

MS. MACEDONIO: We are just going to bring out the defendant.

THE COURT: Have the parties provided me a verdict sheet? The answer is not that I am aware of. Please provide me with an agreed-upon verdict sheet.

MS. BHASKARAN: Judge, we have an agreed upon verdict sheet. I will hand it up to Ms. Bhaskaran. We also have -- with respect to the trial indictment, we had a question for the Court.

THE COURT: Yes.
(Defendant present)

MS. BHASKARAN: So what we did with the trial indictment is that we removed the other codefendants and the other charges related to those codefendants. The original indictment has a forfeiture allegation and some other notice provisions. We were not sure whether the Court wanted us to remove those notice provisions that the jury would not have to vote on so we prepared two versions, one with the notice provision.

THE COURT: When you say the notice provision, are you talking about the forfeiture?

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MS. BHASKARAN: Yes. The forfeiture allegations and there is also in the original indictment special findings as to Christian Pabon, that he was 18 years old and that he participated in the murder.

MR. SCHNEIDER: Your Honor, it is our position that those pages are not relevant and the jurors are not going to be asked to consider them. They are not part of the charges in terms of elements, so I just think it is unnecessary. It could possibly confuse the jurors.

THE COURT: All right. Thank you. Let me just -- I have the sealed superseding indictment in front of me, S1. The government is saying they will take out all of the other defendants, correct?

MS. BHASKARAN: Correct, your Honor.

THE COURT: They will take out Banga, a/k/a Banga.

MS. BHASKARAN: Correct.

THE COURT: Then direct me, are you talking about page 21 of 25, where it says -- better I do it this way, paragraph 34, 35, 36, 37, and 38? Is that what you are talking about?

MS. BHASKARAN: Your Honor, I don't have the original indictment in front of me, but is the Court referring to the section that says "Special Findings as to Christian Pabon"?

THE COURT: From there to the end.

MS. BHASKARAN: Yes.

THE COURT: You are proposing you take that out.

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MS. BHASKARAN: We are happy to take it out.

THE COURT: And the defense's position is that --

MR. SCHNEIDER: Is that it should come out.

THE COURT: It's out.

MR. SCHNEIDER: Additionally paragraph 8 --

THE COURT: Just a moment.

MR. SCHNEIDER: I'm sorry.

THE COURT: Let me think through this. I'm going too fast.

On the agreement of the parties, the forfeiture allegations can come out. That and the substitute asset provision can come out with the agreement of the parties.

What about the special findings as to Pabon? Let me read them.

(Pause)

THE COURT: As I now read 3591(a)(2)(C), which is the basis of the special findings as to Christian Pabon, in paragraph 34 of the S1 indictment, these special findings relate to findings that the jury would have to make if the possibility of a death sentence is to be operative. This happened before I took the case over. But my understanding is that the Department of Justice made the determination not to seek the death sentence here, and therefore it seems to me that the special findings as to Christian Pabon in paragraph 34 of the S1 indictment are irrelevant and there is no reason to give

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1 them to the jury.

2 I gather, Mr. Schneider, from what you said, the
3 defense concurs in that.

4 MR. SCHNEIDER: That is correct, your Honor, yes.

5 THE COURT: And I understand from the government, the
6 government is indifferent as to whether I keep it in or not, is
7 that correct?

8 MS. BHASKARAN: That's correct, your Honor.

9 THE COURT: Okay. We are going to take out the
10 special findings as to Christian Pabon and , on the agreement of
11 the parties, we are going to take out the forfeiture
12 allegations as well and the substitute assets provision .

13 What else? Government is there anything else ?

14 MS. BHASKARAN: Not from the government, your Honor .

15 THE COURT: Mr. Schneider.

16 MR. SCHNEIDER: Thank you, your Honor.
17 Also paragraph 8 on page 6, the notice of special
18 sentencing factors, I think that is also irrelevant and, as we
19 know, sentencing is never an issue for -- it's not an issue for
20 the jury to discuss or consider, so I don't know what --

21 THE COURT: Let me read it, sir.

22 (Pause)

23 THE COURT: So the defense is seeking that the notice
24 of special sentencing factors be deleted, correct,
25 Mr. Schneider.

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1 THE COURT: Let me ask it a different way. What is
2 the purpose of having this in here, government, when Count Two,
3 murder in aid of racketeering, requires that they -- or sets
4 forth the allegation, I should say --

5 MS. BHASKARAN: Your Honor, our understanding is that
6 the purpose of this provision is to put the defendant on notice
7 that the statutory maximum penalty for a Section 1962(d)
8 violation is not the ordinary 20 years but, because this
9 offense involved a murder, it is a statutory maximum of life.

10 THE COURT: He is aware of that. I mean, this
11 indictment goes to him and he has pled not guilty to it, and he
12 is aware of what's in the indictment and he has discussed it
13 with his attorney and so forth. So that aim is taken care of.

14 I guess what I am asking now is why -- what's the
15 purpose of having the jury have this in the indictment ?

16 MS. BHASKARAN: So I think the purpose of the jury
17 having it, and perhaps this is resolved by the verdict form
18 which asks the jury whether the pattern of racketeering
19 activity included the murder of Orlando Rivera --

20 THE COURT: Exactly. That's what I am thinking of,
21 that it is in the jury verdict form. That's exactly what I am
22 focusing on.

23 MS. BHASKARAN: So, your Honor, I think that's right.
24 I think so long as the special interrogatory remains in the
25 verdict form and the jury is asked that special interrogatory,

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1 MR. SCHNEIDER: Yes, your Honor.

2 THE COURT: What is the position of the government?

3 MS. BHASKARAN: Your Honor, it is our position that
4 that should remain in the trial indictment. The jury will be
5 asked a special interrogatory with respect to Count One as to
6 whether the defendant -- the racketeering activity included the
7 murder of Orlando Rivera. That's in your Honor's jury
8 instruction, I believe, as Instruction No. 37. The jury does
9 need to vote on this because --

10 THE COURT: Just a moment. Let me look at it.

11 And this verdict form is agreed, the one that was just
12 handed to me, agreed to by the parties . Is that correct,
13 government?

14 MS. BHASKARAN: Yes.

15 THE COURT: Mr. Schneider.

16 MR. SCHNEIDER: Yes, that's correct, Judge.

17 THE COURT: All right. Let me read it.

18 (Pause)

19 THE COURT: Where does the -- 1962(d), which is at the
20 bottom of Count One in my book, doesn't have this issue of
21 special sentencing factors. Where can I find the requirement
22 of notice of special sentencing factors in the statute? Is
23 there such a provision?

24 MS. BHASKARAN: Your Honor, we are just looking at the
25 provision.

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1 then it seems to me that it doesn't -- that the legalese in the
2 indictment can be removed.

3 THE COURT: All right. So we will remove the notice
4 of special sentencing factors on the agreed upon verdict form.
5 It says, "If and only if you find the defendant guilty of Count
6 One, which types of racketeering crimes do you find were
7 involved in the offense," and the first one is "Acts involving
8 murder under New York law." So it seems to me that that,
9 indeed, is taken care of.

10 All right. The parties can talk.

11 (Counsel confer)

12 THE COURT: All right. Let's wrap it up, please.
13 Decide what you are recommending, if anything. Or if you
14 differ, I want to know about the difference.

15 MS. BHASKARAN: So, Judge, I think the one concern
16 that the government has is the jury does have to make a finding
17 about whether the racketeering activity included the murder of
18 Orlando Rivera.

19 THE COURT: It does, and it has to be unanimous and
20 that's in the charge.

21 MS. BHASKARAN: And I think the concern from the
22 government is whether the jury, when they see the trial
23 indictment, will see a disconnect between what they need to
24 find on the jury verdict form and what's in the indictment and
25 whether that --

1 THE COURT: Disconnect to what extent?
 2 MS. BHASKARAN: To the extent that the special
 3 interrogatory in the jury verdict form is not reflected in the
 4 indictment.
 5 THE COURT: How so? To what extent?
 6 MS. BHASKARAN: Because the special interrogatory with
 7 respect to the murder is captured in the trial indictment in
 8 this notice of special sentencing factors.
 9 THE COURT: Yes.
 10 MS. BHASKARAN: That's how it is reflected there.
 11 THE COURT: Yes.
 12 MS. BHASKARAN: And so --
 13 THE COURT: And it's reflected in the jury verdict
 14 with the question -- your very first proven/not proven point .
 15 MS. BHASKARAN: It's actually on the back page, your
 16 Honor. It's "If and only if you find the defendant guilty of
 17 Count One to the pattern of racketeering activity that the
 18 defendant agreed would be committed involved the murder of
 19 Orlando Rivera."
 20 THE COURT: Isn't the only murder in this case the
 21 Rivera murder?
 22 MS. BHASKARAN: Your Honor, there was also testimony
 23 about attempted murders. But for this purpose, yes, the only
 24 murder is the murder of Orlando Rivera.
 25 THE COURT: I'm going to keep that because I think it

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1 indictment, there is then a disconnect between what's in the
 2 indictment and then what's in the jury verdict form.
 3 THE COURT: Wait. And what is that disconnect?
 4 MR. HOBSON: Because the jury will be required to find
 5 or they will be asked to find that if the defendant is guilty
 6 of Count One, did a pattern of racketeering activity include
 7 the murder of Orlando Rivera? They are asked that special
 8 interrogatory because it impacts the statutory maximum that
 9 applies to the defendant. The concern is if -- and there is no
 10 dispute that that special interrogatory must be in the jury
 11 verdict form. The concern that we have is that we have
 12 removed --
 13 THE COURT: In the special interrogatory, on the form
 14 you have given me, the special interrogatory you are talking
 15 about is which one?
 16 MS. BHASKARAN: It is on page 2, your Honor, on the
 17 top of page 2.
 18 THE COURT: Okay. Because you have to find -- I mean
 19 not -- the jury doesn't have to find, but from your standpoint,
 20 you are seeking a separate determination by the jury not only
 21 guilt as to Count Two, that is, he murdered or aided and
 22 abetted the murder of Orlando Rivera, but also that that murder
 23 was part of the pattern of racketeering activity. That's why
 24 you are seeking what is on the top of page 2 of the form.
 25 MS. BHASKARAN: That's correct.

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1 is appropriate, but it is also captured in your first special
 2 interrogatory, acts involving murder under New York law.
 3 MS. BHASKARAN: Right, yes. The first question
 4 captured the predicates, which are murders and attempted
 5 murders.
 6 THE COURT: Right.
 7 MS. BHASKARAN: But I don't think that necessarily
 8 would be the requisite finding for the statutory maximum issue
 9 that we discussed before.
 10 THE COURT: I see. I see. If I understand you
 11 correctly, Ms. Bhaskaran, the government's concern is that the
 12 jury be focused -- in any event, they are going to be focused
 13 on Count Two. Say it again. I want to make sure I understand
 14 the government's point here. What are you arguing for? The
 15 inclusion of the notice of special sentencing factors in the
 16 part of the indictment that goes to the jury? Is that what you
 17 are arguing for?
 18 MS. BHASKARAN: Yes, your Honor, to the extent that
 19 the Court is going to send back an indictment to the jury --
 20 THE COURT: The Court is going to send back an
 21 indictment to the jury as required, and we know so far what
 22 sections are going to be omitted.
 23 Go ahead.
 24 MS. BHASKARAN: So the concern, then, Judge, is if we
 25 remove the notice of special sentencing factors from the trial

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1 THE COURT: Okay. I'm with you. Now where is the
 2 disconnect.
 3 MS. BHASKARAN: The disconnect, we think, would be
 4 created if in the trial indictment we remove paragraph 8.
 5 THE COURT: Okay. Let me just think about that.
 6 (Pause)
 7 THE COURT: All right. Mr. Schneider, here is the
 8 concern of the government. The jury has to find, if they are
 9 going to, that the murder of Orlando Rivera was part -- the
 10 government is seeking a determination from the jury—that's the
 11 way to put it—that the defendant's participation in the murder
 12 of Rivera is part of the pattern of racketeering activity,
 13 which is reflected in the last special interrogatory under
 14 Count One in the verdict form the parties have agreed to.
 15 The government's position is that to delete the notice
 16 of special sentencing factors in the indictment that the jury
 17 will get may confuse them because, if I understand what
 18 Ms. Bhaskaran is saying, in the section of Count One, there
 19 will be nothing alerting them to the issue of whether or not
 20 the murder of Rivera is part and parcel -- that is, part of the
 21 racketeering activities.
 22 Ms. Bhaskaran, do I have the concern correct?
 23 MS. BHASKARAN: That's correct. Yes, your Honor.
 24 THE COURT: All right.
 25 MR. SCHNEIDER: I believe your Honor takes care of

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1 that in your charge and in the special interrogatories. I
2 think we are getting way ahead of ourselves to think that the
3 jurors are going to sit down and take the indictment and match
4 it up against your Honor's charge. Okay? Your Honor is going
5 to tell them what has to be proven. Your Honor has to tell
6 them what factual decisions they have to make and the jury
7 verdict will reflect that. As your Honor knows, the jurors are
8 told, time and time again, they are not to consider sentencing.
9 They are not to think about or factor --

10 THE COURT: All right. I think you are right. I am
11 going to take out paragraph 8. The record should reflect that
12 this is done at the request of the defense. Paragraph 8,
13 notice of special sentencing factors, is going to be taken out
14 from what the jury sees. It seems to me it is only logical
15 because, Mr. Schneider is correct, sentencing is not for the
16 jury.

17 All right. What else, government? Anything else?

18 MS. BHASKARAN: Nothing else on the trial indictment,
19 your Honor.

20 THE COURT: All right. Get me a copy of -- several
21 copies of the verdict form. Obviously don't make it
22 double-sided. Make it only one-sided. And delete when it says
23 "foreperson and date." Instead, after you have Count Two, put
24 "dated May blank, 2022, New York, New York," and then have 12
25 blank lines for signatures. Otherwise it is fine.

1 THE COURT: All right. I have looked at that, sir.
2 MS. ESPINOSA: Apologize, your Honor. One moment.
3 THE COURT: If you need to talk, go ahead.
4 (Counsel confer)

1 Defense, did you have anything?

2 MR. SCHNEIDER: On the indictment or something else?

3 THE COURT: No, any issue. My deputy said --

4 MR. SCHNEIDER: Yes.

5 THE COURT: -- the parties had issues.

6 MR. SCHNEIDER: Yes, your Honor.

7 THE COURT: And I want to get to the charge.

8 MR. SCHNEIDER: Yes, as do we.

9 We, over the weekend, spoke to the government about a
10 possible stipulation. They have not agreed. It is our
11 intention to introduce certain evidence or -- evidence about
12 Milton Chardon.

13 As your Honor remembers, on the 801(d)(2)(E) the
14 government introduced many statements through their witnesses
15 that Milton Chardon made to them; and, under 806, we are
16 allowed to impeach the declarant's testimony, the declarant
17 being Mr. Chardon. So it is our intention to introduce a
18 redacted copy of the indictment -- because if Mr. Chardon had
19 testified, we would be allowed to ask him what pled guilty to,
20 what he was charged with, what he pled guilty to, what his
21 sentence was. That is -- under 806, it seems pretty clear to
22 me that he can be impeached. And I guess everybody may want to
23 look at 806 before.

24 THE COURT: Let me look at it.

25 MR. SCHNEIDER: Yes.

1 THE COURT: Mr. Schneider.

2 MR. SCHNEIDER: Yes, your Honor.

3 THE COURT: I've read 806.

4 Go ahead.

5 MR. SCHNEIDER: Now that I think --

6 THE COURT: 806 tells me if there are 801(d)(2)(E)
7 statements that have been admitted from the Big 200 founder
8 himself, you're allowed to impeach him as you would any other
9 witness. That's what 806 says.

10 MR. SCHNEIDER: That's my understanding.

11 THE COURT: Go ahead.

12 MR. SCHNEIDER: Yes.

13 Given that, had Mr. Chardon testified, we would have
14 been allowed to ask him what he was originally indicted for,
15 what charges he was indicted for, what he ultimately pled
16 guilty to, what his sentence was, and that at the time of
17 sentence, the government moved to dismiss any open charges
18 against him.

19 THE COURT: Just a moment. Let me think about that.

20 Go ahead.

21 MR. SCHNEIDER: So it seems to me not unreasonable,
22 because those would have been perfectly routine questions, as
23 if, for example, when I questioned, I think it was Mr. Lopez,
24 we asked when you were arrested, you were arrested for a class
25 B felony, you ultimately got a reduced charge and pled to a C

1 felony.

2 THE COURT: It's best if you go to that booth. With
3 the mask it's very hard.

4 MR. SCHNEIDER: I apologize, your Honor.

5 THE COURT: And slow down.

6 MR. SCHNEIDER: Is this better?

7 THE COURT: Yes.

8 MR. SCHNEIDER: I think it's not unusual to ask a
9 witness, normally a cooperator, because if Mr. Chardon was
10 testifying, he would have been called by the government against
11 us, because we wouldn't be impeaching him if we called him. So
12 obviously, if they're introducing statements of a
13 coconspirator, it would be introduced by the opposing party,
14 which would be the government. So should Mr. Chardon have
15 testified, we would have been allowed to ask him the normal
16 questions of what he was originally arrested for and charged
17 with, that he got a break by pleading guilty to a reduced
18 charge, what his sentence was, and that's it; and the fact that
19 when he was sentenced, the government moved to dismiss the open
20 counts against him.

21 THE COURT: All right. I have a view, but let me hear
22 the government.

23 MS. ESPINOSA: Your Honor, the government would object
24 to including any of that information.

25 THE COURT: Any of what information? All of that?

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1 called, would have been a cooperating witness for the
2 government, which is simply not the case. He is not a
3 cooperating witness. He has not signed up to a cooperation
4 agreement, and he did not plead guilty under those
5 circumstances, so treating him as a cooperator here is simply
6 not correct. He's not getting any benefit from the statements
7 the way a cooperating witness would, which would --

8 THE COURT: I understand.

9 MR. SCHNEIDER: Your Honor, may I?

10 THE COURT: Just a moment.

11 Yes. Go ahead.

12 MS. ESPINOSA: Your Honor, the government thinks also
13 introducing this information would be inappropriate under
14 403(b), because it would have a strong likelihood to confuse
15 the jury and lead them to speculate about why Chardon was
16 charged in the original indictment but ultimately pled guilty
17 to something different or speculate about why he was not
18 charged in the murder before them today. And none of that is
19 appropriate for their consideration and would invite them to
20 engage in consideration -- or to consider factors that are
21 simply not before them, nor should they be before them.

22 THE COURT: All right. I don't understand what the
23 government has said it is prepared to stipulate to.

24 MS. ESPINOSA: The government would be prepared to
25 stipulate that Milton Chardon was previously convicted of

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1 MS. ESPINOSA: The government would object to
2 introducing evidence of what Mr. Chardon was originally charged
3 with in this case and that he pled guilty to a -- to not the
4 entire indictment. We would be willing to stipulate, and we
5 have told defense counsel --

6 THE COURT: Just a moment.

7 Go ahead.

8 MS. ESPINOSA: We would also object to including
9 information about his plea agreement and that the government
10 moved to dismiss certain counts after sentencing. We would be
11 willing to stipulate that Milton Chardon --

12 THE COURT: You're opposing the fact that he pled to a
13 plea agreement?

14 MS. ESPINOSA: We are opposing introducing the
15 substance of his plea agreement, that included that he --

16 THE COURT: Wait.

17 Go ahead.

18 MS. ESPINOSA: That he pled guilty to a (b)(1)(A)
19 rather than all of the charges in the original indictment.

20 We would be willing to stipulate that he was
21 previously convicted of narcotics distribution but do not think
22 that the rest of that information should properly be before the
23 jury.

24 Defense counsel is effectively engaging in a
25 hypothetical exercise of assuming that Chardon, if he had been

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1 narcotics distribution.

2 THE COURT: That's it.

3 MS. ESPINOSA: That's it, your Honor.

4 THE COURT: OK.

5 Mr. Schneider.

6 The jury is here.

7 MR. SCHNEIDER: I'll be quick, your Honor. I know we
8 have time issues.

9 I guess we're all getting a little into the weeds, and
10 we're forgetting that 806 makes it sound as if Mr. Chardon was
11 a witness called by the opposing party. Otherwise, they
12 couldn't have introduced any 801(d)(2)(E) statements. So let's
13 be clear. If Mr. Chardon was testifying here, if he was on the
14 witness stand, the government would have no basis at all to
15 object to any of the questions I would have asked and I'm
16 asking now to introduce before this jury. They would have no
17 basis to object if I said weren't you originally charged in an
18 indictment. They would have no basis to object --

19 THE COURT: I understand that, but he wasn't called.

20 I don't understand that.

21 MR. SCHNEIDER: 806 specifically says as if he
22 testified --

23 THE COURT: Wait.

24 MR. SCHNEIDER: -- he could be impeached.

25 THE COURT: "If the party against whom the statement

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1 was admitted --"
 2 MR. SCHNEIDER: That's me.
 3 THE COURT: That's you.
 4 MR. SCHNEIDER: Correct.
 5 THE COURT: "-- calls the declarant as a witness, the
 6 party may examine the declarant on the statement as if on
 7 cross-examination."
 8 MR. SCHNEIDER: I understand that, but that doesn't
 9 deal with the first part of 806, your Honor.
 10 THE COURT: The first part -- just a moment. The
 11 first part of 806 says, it seems to me, that if you have
 12 statements of Chardon that are inconsistent with the
 13 801(d)(2)(E) statements the government has introduced on its
 14 case, you can introduce those as impeaching material, as prior
 15 inconsistent statements.
 16 MR. SCHNEIDER: Correct.
 17 THE COURT: That is the first part of 806.
 18 MR. SCHNEIDER: Well, no. That's the second part,
 19 Judge.
 20 THE COURT: But a hearsay statement or a statement
 21 described in 801(d)(2)(E), so let's deal with that.
 22 MR. SCHNEIDER: Right.
 23 THE COURT: "When an 801(d)(2)(E) statement has been
 24 admitted in evidence," and there has been here; the government
 25 said Chardon said this or that. OK? "And then supported by

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1 any evidence that would be admissible for those purposes" --
 2 I'm sorry.
 3 MR. SCHNEIDER: Your Honor, you missed a portion.
 4 THE COURT: Yes.
 5 MR. SCHNEIDER: The declarant --
 6 THE COURT: Wait. "When an 801(d)(2)(E) statement has
 7 been admitted in evidence, the declarant's credibility may be
 8 attacked by any evidence that would be admissible for those
 9 purposes if the declarant had testified as a witness." And
 10 that, sir, would be any inconsistency that you can proffer from
 11 the 801(d)(2)(E) statements introduced by the government.
 12 Just a moment. That's how I see that so far.
 13 MR. SCHNEIDER: Your Honor, the inconsistent --
 14 THE COURT: "The court may admit evidence of Chardon's
 15 inconsistent statement regardless of when it occurred or
 16 whether Chardon had an opportunity to explain or deny it."
 17 If you call Chardon as a witness, you can examine
 18 Chardon on the statements as if he was on cross-examination. I
 19 don't think -- I think that limits you in this instance to, and
 20 I would allow you to put in anything that you have from him
 21 that's inconsistent with the 801(d)(2)(E) statements introduced
 22 by the government. That's how I see that.
 23 Sir.
 24 MR. SCHNEIDER: I think that is true, but that's only
 25 half true, because before you deal with a possible inconsistent

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1 statement, it says, I thought, very clearly declarant's
 2 credibility may be attacked and then supported by any evidence
 3 that would be admissible for those purposes if the declarant
 4 had testified as a witness. So they may be impeached, period.
 5 Then there's a new sentence, which talks about possibly using a
 6 prior inconsistent statement. They are two separate issues,
 7 your Honor. They're both related to --
 8 THE COURT: All right. Let me look.
 9 But how are you attacking his credibility by saying he
 10 was originally charged with a huge amount and the government
 11 let him off with a slap on the wrist, which it certainly sounds
 12 like what they did?
 13 MR. SCHNEIDER: The same way I appropriately
 14 questioned Mr. Lopez and any other witness who testified here
 15 in this trial, that they were originally charged with a certain
 16 crime, then they ultimately pled guilty to a reduced charge.
 17 THE COURT: That's, as the government points out, when
 18 he's a cooperator.
 19 MR. SCHNEIDER: OK. The only way you can introduce an
 20 801(d)(2)(E) statement is by the opposing party. I can't
 21 introduce it if I want. Right?
 22 THE COURT: Yes.
 23 MR. SCHNEIDER: If the government is introducing it,
 24 one has to assume that they are getting that from a hostile
 25 witness and/or a cooperator. So either way, whether they're a

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1 hostile witness or a cooperator, they would be called by the
 2 government.
 3 THE COURT: I understand what you're saying.
 4 What's the response of the government?
 5 MS. ESPINOSA: Your Honor, I certainly think that
 6 would be going well beyond the face of the rule if we were to
 7 read in that their witness is hypothetically treated as if they
 8 were a cooperator, getting all of the benefits of cooperation.
 9 THE COURT: Wait just a moment. I think what
 10 Mr. Schneider is saying is it's irrelevant as to whether that
 11 person is a cooperator or not. Only what's relevant is the
 12 person is adverse, as it were. And they're still adverse if
 13 they're a cooperator.
 14 Mr. Schneider, is that extending your remarks too far?
 15 MR. SCHNEIDER: It is not. That's correct, your
 16 Honor.
 17 THE COURT: All right. Go ahead.
 18 MS. ESPINOSA: Your Honor, if the witness were called,
 19 they could certainly be impeached by evidence of a criminal
 20 conviction under Rule 609, but Rule 609 does not open the door
 21 to then bring in all of the additional information that defense
 22 counsel is suggesting we include here, like the original
 23 charges.
 24 THE COURT: What bothers me, Mr. Schneider, is I
 25 haven't heard anything that is a prior inconsistent statement,

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1 and impeaching. I haven't heard anything that impeaches from
2 that standpoint. Nor, based on the 801(d)(2)(E) statements
3 that have been introduced, does the fact that the government
4 gave him a break impeach him. I don't understand how you're
5 impeaching him. Really all you're doing is saying the
6 government is treating Mr. Pabon unfairly compared to how they
7 treated the Big 200 founder.

8 MR. SCHNEIDER: First of all, I think a prior
9 inconsistent statement is just one form of impeaching. As your
10 Honor knows --

11 THE COURT: That's true.

12 MR. SCHNEIDER: Right?

13 As your Honor knows, a felony conviction is a form of
14 impeachment. As your Honor knows, getting a plea agreement is
15 an appropriate area of cross-examination. OK?

16 THE COURT: Just a moment.

17 Yes, but it's not impeachment, is it?

18 MR. SCHNEIDER: It's a part of impeachment. Of course
19 it is, your Honor. Impeachment isn't just were you convicted
20 of a crime, yes, and you sit down. And I did this with
21 Mr. Lopez.

22 THE COURT: Impeachment in the sense of you're
23 knocking down his testimony.

24 MR. SCHNEIDER: Yes, exactly. You're calling into
25 question --

1 THE COURT: Writ large that is impeachment, correct.

2 MR. SCHNEIDER: You're calling into question his
3 reliability -- because of his conviction, because he got a
4 deal, because of whatever. That's a potential bias also, that
5 he got a deal from the government. So you have potential bias
6 and you have a prior conviction.

7 It's almost, I hate to sound so surprised, but if
8 Mr. Chardon was on the witness stand, we wouldn't be having
9 these conversations. I would be cross-examining him about all
10 of these things. I promise you it would have been because it
11 wouldn't have been unusual or out of the ordinary. But because
12 it's an 806 issue, I think the government is not used to
13 hearing about this particular form of testimony or form of
14 evidence, and I think that's what the issue has become, because
15 there is no doubt that if Chardon was called as a witness, I
16 would be asking these questions, and nobody would say a word
17 except I wish he didn't.

18 THE COURT: Except what?

19 MR. SCHNEIDER: I wish he didn't ask, not that it was
20 improper.

21 THE COURT: Government.

22 MS. ESPINOSA: Your Honor, I simply disagree with
23 that. The government certainly would be objecting if he were
24 asking these questions if Chardon were on the witness stand in
25 the posture he's in right now.

1 The reason Mr. Schneider was able to approach
2 Mr. Lopez differently is he is a cooperator. He got a benefit
3 in exchange for his statements. That properly goes to
4 credibility. Now, a felony conviction is certainly appropriate
5 for impeachment, but it's solely the conviction. It is not all
6 of the additional indictments, plea offers, plea agreements
7 that go into that conviction under Rule 609. So treating
8 Mr. Chardon as a hypothetical cooperator is not appropriate in
9 this situation. That is not the posture that we're in. He is
10 not getting a benefit for the statements that have been
11 introduced.

12 THE COURT: All right. I understand.

13 Just let me talk with my clerk for a moment.

14 I'm going to exclude that evidence; that is, the
15 evidence that Chardon was charged with murder and other things
16 and was allowed to plead to a narcotics distribution. I don't
17 think it comes in under 806.

18 MR. SCHNEIDER: May I correct one thing? I'm sorry to
19 interrupt, but he never was charged with murder, your Honor.

20 THE COURT: I'm sorry. Tell me what he's been charged
21 with. I apologize.

22 MR. SCHNEIDER: I just want to make sure the record is
23 clear.

24 THE COURT: Yes. Thank you.

25 MR. SCHNEIDER: He was charged with Counts -- I just

1 had the indictment.

2 I'm sorry, your Honor.

3 He was charged in Count One, I believe, Four, Five,
4 Eight, Nine, Thirteen, Fourteen, Fifteen, something along those
5 lines. But he was never charged with the murder with
6 Mr. Pabon.

7 THE COURT: All right. Mr. Pabon must have gone in
8 for a break. Do you want him out here?

9 MR. SCHNEIDER: No. We're fine to continue. We'll
10 explain it to him.

11 THE COURT: Go ahead. Tell me what he was charged
12 with. I thought the point you wanted to make was he was
13 charged with lots of horrendous things and was allowed to plead
14 only to narcotics distribution.

15 MR. SCHNEIDER: He was charged with the same Count One
16 as Mr. Pabon, the racketeering conspiracy, which mentioned all
17 of those horrendous things, but not with the specific murder of
18 Mr. Rivera.

19 THE COURT: OK. Thank you for clarifying that. I
20 think that's relevant.

21 The analysis is still the same, though. 806 is really
22 focused on, and the cases about prior inconsistent statements,
23 as, for example, *United States v. Stewart* 907 F.3d 677, where
24 the issue there was prior inconsistent statements, so the court
25 held that he should have been allowed to impeach him with that

1 prior inconsistent statement.

2 There are other cases where the evidence sought to be
3 introduced did not contradict the conspirator's testimony.
4 That's not what we have here. What we have here is really an
5 effort by the defense, by introducing the plea agreement, the
6 original indictment, the fact that the sentence and the plea
7 were to simply a narcotics distribution, when at least one of
8 the counts was the racketeering pattern here, to show that this
9 defendant is being treated unfairly vis-à-vis somebody who was
10 even higher up in the racketeering enterprise. That's not the
11 purpose of 806. It doesn't fit within 806.

12 The parties can introduce the narcotics distribution
13 conviction if they wish, but I don't find that it comes within
14 806 -- that is, again, the effort to show that there was an
15 indictment, a plea agreement, a conviction, and a sentence.
16 And I also do think it's a 403 issue, because I think the jury
17 will then be misled and will be focusing on what I think the
18 purpose of this is from the standpoint of the defense -- that
19 is, disparate treatment of the founder of the alleged
20 racketeering enterprise, and another person -- that is, the
21 defendant. So I do find the probative value is substantially
22 outweighed by the danger of misleading the jury and prejudice.

23 That's my ruling.

24 What other issues do we have, apart from the charge?

25 All right. Let's do the charge.

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1 MS. MACEDONIO: Your Honor, before we begin, may I ask
2 a question?

3 Will the Court consider that the objections or
4 deletions that we made in our original requests to charge are
5 incorporated in this conference so that we don't have to make
6 those again?

7 THE COURT: If your question is do the objections set
8 forth in the document entitled "defendant's requested changes
9 to the government's requests to charge," are they still extant
10 and part of the record, yes.

11 MS. MACEDONIO: Thank you. Then I will not raise them
12 during this conference.

13 THE COURT: OK. And therefore, you have no
14 objections.

15 MS. MACEDONIO: No. Just a few, your Honor.

16 THE COURT: I'm sorry?

17 MS. MACEDONIO: Just a few.

18 THE COURT: All right. Well, let's take it.

19 Any objections to the general charges? You were given
20 my proposed charge yesterday morning. So that's, on my form,
21 through and including page 30 -- that is, general charges.

22 Any objections?

23 MS. MACEDONIO: Yes, your Honor.

24 On page 8.

25 THE COURT: Yes.

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1 MS. MACEDONIO: Second paragraph, the second line, I
2 think you need to take out "you are considering," as there's
3 only one defendant.

4 THE COURT: Oh, yes. I thought we had taken care of
5 that. "It is for you and you alone to decide whether the
6 government has proven that the defendant" -- I'm going to
7 strike "you are considering."

8 Thank you.

9 Any other objections in the general charges?

10 MS. MACEDONIO: On page 9, your Honor, bottom
11 paragraph, that starts with "This presumption."

12 THE COURT: Yes.

13 MS. MACEDONIO: On the second line, the last word,
14 "and until," I would ask that you excise those from the charge.
15 So it would say "unless you are convinced," not until.

16 THE COURT: Government.

17 MS. ESPINOSA: No objection.

18 MS. MACEDONIO: I think that's all I have with respect
19 to the first 30 pages, your Honor.

20 THE COURT: Government, anything?

21 MS. ESPINOSA: Nothing in the first 30 pages, your
22 Honor.

23 THE COURT: All right. Then let's do anything up
24 through all of Count One; in other words, up through and
25 including page 64.

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1 MS. MACEDONIO: Your Honor, on page 32 --

2 THE COURT: Yes, ma'am.

3 MS. MACEDONIO: -- I would just ask that you add the
4 defendant's first name, so rather than saying Pabon, it would
5 say Christian Pabon. There are two instances on page 32 where
6 that happens.

7 THE COURT: I quite agree with that. I'm sorry. It
8 should say that.

9 MS. MACEDONIO: I'm sorry, Judge. What page were we
10 going up to?

11 THE COURT: All of Count One.

12 MS. MACEDONIO: OK.

13 MS. ESPINOSA: Your Honor, we have something.

14 THE COURT: I'm sorry. I'm trying to find the second
15 Pabon.

16 MS. ESPINOSA: I believe it's the first sentence of
17 the third paragraph, your Honor.

18 THE COURT: Yes. All right. What I'm doing is on
19 page 32, each time that Mr. Pabon is mentioned, I'm giving his
20 full name, Christian Pabon.

21 What else?

22 MS. ESPINOSA: On page 45, your Honor, if defense
23 counsel doesn't have anything until --

24 THE COURT: I'm sorry. Is the defense talking? Who
25 was just talking?

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1 MS. ESPINOSA: The government, your Honor.
 2 **THE COURT:** The government. Masks.
 3 MS. ESPINOSA: On page 45, your Honor, I believe in
 4 our proposed charge, your Honor deleted the last sentence that
 5 we had included at the end of the second paragraph, that "all
 6 narcotics activity, even purely local activity, has an effect
 7 on interstate commerce." We believe that that is a standard
 8 instruction. It is based on Supreme Court preceden ce so we
 9 would ask that it be re-added here.
 10 **THE COURT:** What is the position of the defense?
 11 MS. MACEDONIO: I think that's legally accurate, your
 12 Honor.
 13 **THE COURT:** All right. I'm adding in to the bottom,
 14 to the last, to the end of the second paragraph on charge 29,
 15 racketeering conspiracy, second element, effect on interstate
 16 commerce," the following sentence:
 17 "All narcotics activity, even purely local activity,
 18 has an effect on interstate commerce. So if you find that
 19 members of the enterprise trafficked in narcotics as part of
 20 their membership in the enterprise, you may find this element
 21 satisfied."
 22 I'm adding that back in.
 23 What else?
 24 Government.
 25 MS. ESPINOSA: Similarly, at the bottom of page 59,

1 What I took out was "With respect to narcotics,
 2 Congress has determined that all narcotics activity, even
 3 purely local narcotics activity, has a substantial effect on
 4 interstate commerce. Thus, if you find that a defendant robbed
 5 a drug dealer of drugs or drug proceeds, you may find the
 6 interstate element satisfied."
 7 MS. ESPINOSA: Yes, your Honor.
 8 **THE COURT:** You're asking that I put that back in.
 9 MS. ESPINOSA: Yes, your Honor. Similarly, we think
 10 this is a similar instruction --
 11 **THE COURT:** What's the position of the defense?
 12 MS. MACEDONIO: I don't legally disagree, your Honor.
 13 **THE COURT:** All right. I'll ask why you then
 14 requested that it be deleted. But we'll move on. I'm going to
 15 put that back in.
 16 MS. MACEDONIO: Your Honor, my apologies. I neglected
 17 the fact that we had asked for it to be deleted. I'm sort of
 18 getting lost in the charge here, so I'm going to renew that
 19 objection. I think it's completely unnecessary to now have it
 20 in two parts of the charge, and I ask that it not be included.
 21 And I stand by my objections that were previously filed.
 22 **THE COURT:** All right. Where is the support?
 23 Government, you tell me that it is part of the standard charge.
 24 I'm not quite sure what the standard charge is any more than I
 25 know what the standard stipulations are in civil deposition s.

1 your Honor, in charge 35 --
 2 **THE COURT:** Just a moment.
 3 Yes.
 4 MS. ESPINOSA: We would request that you add back in
 5 "With respect to narcotics, Congress has determined that
 6 all" --
 7 **THE COURT:** Where are you?
 8 MS. ESPINOSA: At the bottom of 59, your Honor. It
 9 was deleted from our proposed charge. It is the same type of
 10 sentence as the ones we just added back in to the prior charge.
 11 **THE COURT:** Where? I have first, second, third.
 12 MS. ESPINOSA: I apologize. "Count One, racketeering
 13 conspiracy, predicate acts involving robbery under federal
 14 law."
 15 **THE COURT:** Yes.
 16 MS. ESPINOSA: Charge 35, page 59.
 17 **THE COURT:** Yes.
 18 MS. ESPINOSA: At the very end of the page, which
 19 currently ends with "commerce affected need not be lawful."
 20 **THE COURT:** No, no. Mine's different.
 21 Yes. Just before the word "fourth"?
 22 MS. ESPINOSA: Yes, your Honor. Just before the word
 23 "fourth."
 24 **THE COURT:** Just a moment. Let me go back to the
 25 prior draft.

1 But do you have any specific support for that provision?
 2 MS. ESPINOSA: Give me one moment, your Honor, if I
 3 may?
 4 **THE COURT:** Yes.
 5 MS. ESPINOSA: Your Honor, the charge that we
 6 proposed, if you look at our original draft, has a citation to
 7 the jury instructions given in *United States v. Herring*, which
 8 is 16 Cr. 302. I do not have that charge printed in front of
 9 me.
 10 **THE COURT:** Yes, but the fact that it was given -- who
 11 is the judge in that?
 12 MS. ESPINOSA: Judge Karas, your Honor.
 13 **THE COURT:** The fact that it was given in another case
 14 is soft support. I was talking about a Second Circuit
 15 citation.
 16 MS. ESPINOSA: I do not have one at my fingertips,
 17 your Honor.
 18 **THE COURT:** What's the defense summation going to be?
 19 Is the defense summation going to be that there's no effect on
 20 interstate commerce here? Is it going to include that
 21 argument?
 22 MR. SCHNEIDER: I'm not going to discuss interstate
 23 commerce at all.
 24 **THE COURT:** All right. I'm going to take that out
 25 then, but I would appreciate it if the government can give me

1 any support; for future cases I'll know.
2 MS. ESPINOSA: Yes, your Honor.
3 THE COURT: Right now, given the fact that the defense
4 is not going to argue interstate commerce, I'm going to keep
5 that out. But again, if the government has support, let me
6 know. If you have specific support before the closings, I may
7 change my mind yet again.
8 MS. ESPINOSA: Your Honor, I can tell you that the
9 proposition that local drug activity affects interstate
10 commerce comes from *Taylor v. United States*, which is 136 S.Ct.
11 2074, 2077-78.
12 THE COURT: That's pretty nifty. Did your computer do
13 that? How did you do that?
14 Mr. Hobson, you're working that thing. Your computer
15 found that?
16 MR. HOBSON: I did a consult with someone.
17 THE COURT: Oh, all right. Well, let me right now
18 take a look at 136 S.Ct. 2074, 2077.
19 Ms. Macedonio, are you going to yield to the Supreme
20 Court, or no?
21 MS. MACEDONIO: I don't know that it's a matter of
22 yielding to the Supreme Court. I suppose if I were asked, I
23 would. However, since we are not arguing this as part of the
24 summation at all and it has not been a part of the case, I
25 stand by my position.

1 Two is that the defendant murdered Orlando Rivera , or aided and
2 abetted another in murdering Orlando Rivera, in violation of
3 New York law."
4 THE COURT: Read the whole charge. Read the second
5 paragraph.
6 MS. ESPINOSA: "I have already defined for you in
7 connection with Count One the concepts of enterprise, affecting
8 interstate commerce, and racketeering activity. If you find
9 beyond a reasonable doubt that the 200 gang, the enterprise
10 alleged in Count One, did exist, affected interstate commerce,
11 and engaged in racketeering activity, as described in Count
12 One, then you must go on to consider the other elements of the
13 charges in Count Two."
14 THE COURT: I think that's correct. I think there
15 should be that introductory sentence, and I don't know why it
16 was deleted.
17 Defense, what's your position?
18 MS. MACEDONIO: Yes, Judge. That's what we have in
19 our requests to charge as well. There's a sentence missing
20 THE COURT: All right.
21 What else? Anything at all?
22 MS. ESPINOSA: Just one more thing. On the next page,
23 your Honor, 68, charge 41. Again, your Honor deleted from our,
24 the second paragraph in our proposed charge,s the last couple
25 of sentences, beginning with, "For example, this element is

1 THE COURT: Fine. You have it.
2 MS. MACEDONIO: Thank you.
3 THE COURT: I'm going to take a look at that case. My
4 deputy will print it out right now, so let me go on. My clerk
5 will do that. While she's doing that, I'll take a look at it.
6 What else do we have?
7 MS. ESPINOSA: Your Honor, I have something on page
8 67, which is charge 40, Count Two, murder in aid of
9 racketeering.
10 THE COURT: I'm sorry. Page 67.
11 MS. ESPINOSA: Yes. Charge 40.
12 THE COURT: Yes, ma'am.
13 MS. ESPINOSA: I believe the first sentence was
14 inadvertently omitted from this element and should be, should
15 read:
16 "The second element that the government must prove in
17 connection with Count Two is that the defendant murdered
18 Orlando Rivera, or aided and abetted another in murdering
19 Orlando Rivera, in violation of New York law."
20 It jumps straight to "I have already defined for you."
21 THE COURT: Yes, I think you're right. Let me find it
22 in your original one. I think you're right.
23 All right. Read me what you wanted us to add in.
24 MS. ESPINOSA: "The second element that the government
25 must prove beyond a reasonable doubt in connection with Count

1 satisfied if the defendant committed the murder because he knew
2 it was expected of him by reason of his association with the
3 enterprise, because it would maintain or enhance his position
4 or prestige within the enterprise or with respect to a
5 high-ranking member of the enterprise, if he committed or
6 sanctioned the murder to protect the enterprises's operations
7 or advance its objectives. These examples are by way of
8 illustration and are not exhaustive."
9 The government would ask that that be added back in .
10 THE COURT: Defense.
11 MS. MACEDONIO: We continue our objection, your Honor.
12 THE COURT: I'm going to keep that paragraph out.
13 It's definitely gilding the lily. This is not to set forth the
14 government's position. The point is already made, and there's
15 plenty of testimony on this. They'll get the idea. I'm
16 keeping it the way I have it.
17 Next.
18 MS. ESPINOSA: Nothing else from the government, your
19 Honor.
20 THE COURT: All right. Defense, anything?
21 MS. MACEDONIO: Yes, your Honor. With regard to No.
22 42, *Pinkerton* liability.
23 THE COURT: Yes.
24 MS. MACEDONIO: The defense continues to object to
25 this inclusion of this part of the charge at all. This is not

part of the government's theory of the case. The government's position has been that Mr. Pabon was there; that he was shooting, and there was a lot of testimony that , in fact, he was the shooter that killed Mr. Rivera. I think that given that testimony and the government's position with regard to that and the aiding and abetting instructions that are already coming in, the *Pinkerton* liability just simply does not apply in this case.

THE COURT: All right. Let me hear from the government.

MS. ESPINOSA: Your Honor, the government does think that it should be included here, and I would just note for the record that there hasn't been specific testimony that it was the defendant's --

THE COURT: Just a moment.

Go ahead.

MS. ESPINOSA: I would just clarify that the testimony has been that the defendant believed that it was his bullet that killed Mr. Rivera and that Milton Chardon said that the defendant's bullet was the one who killed, was the one that killed Mr. Rivera, but not necessarily additional evidence on that point.

I would just note generally that we think it's appropriate here to include the *Pinkerton* instruction because the ample evidence that has come in about the defendant's role

substantive acts to the existence of the conspiracy. That's not at issue here. There's enormous testimony and evidence about the existence of the racketeering conspiracy. So the danger of *Pinkerton* is not met here, and I do think it is an alternative theory available to the government of liability.

I'm going to include the *Pinkerton* charge.

Now I'm going back to the issue of local drug activity.

The government is right here. Whoever Mr. Hobson consulted with also had a computer at his fingertips. *Taylor v. United States*, Supreme Court, February 23, 2016; it looks like it's 579 U.S. 301 and 136 S.Ct. 2074 at page *307, and 2880 on the S.Ct. cite:

"In *Raich*, the court addressed Congress's authority to regulate the marijuana market. The court reaffirmed Congress's power to regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce. The production, possession, and distribution of controlled substances constitute a class of activities that in the aggregate substantially affect interstate commerce, and therefore, the court held -- this was in *Raich* -- "Congress possesses the authority to regulate and to criminalize the production, possession, and distribution of controlled substances even when those activities occur entirely within the boundaries of a single state. Any other outcome, we

in the gang as a shooter, as someone who commits violence with other members of the gang, and therefore, that it would be very reasonably foreseeable to him that other members of the gang would engage in such violence if the jury were to have doubts as to whether he was personally present. If they were to find that he was a member of the RICO conspiracy at the time, it certainly would have been foreseeable to a shooter in the gang that other members of the gang would engage in acts of violence like this.

MS. MACEDONIO: Your Honor --

THE COURT: Just a moment.

Yes.

MS. MACEDONIO: I think that it's a complete variation of what the government's overall theme of this case has been. They're not arguing that Christian Pabon was standing on a corner watching while somebody else was shooting. They're not arguing that he perhaps counseled other people to go and do this. They're arguing that he was there and he was a shooter. And so to now inject this charge in or this type of liability in seems to make absolutely no sense at this point.

THE COURT: No. I disagree. I thought quite a bit about the *Pinkerton* charge here. The government put it in and the defense did not. I reread *Laureano*. I reread *Salameh*, I reread *Gallego*. I reread *Sand*. The risk in *Pinkerton* is that the jury will reason improperly from the existence of

warned, would leave a gaping enforcement hole in Congress's regulatory scheme."

Therefore, I'm putting back that sentence that says, "With respect to narcotics, Congress has determined that all narcotics activity, even purely local narcotics activity, has a substantial effect on interstate commerce. Thus, if you find a defendant robbed a drug dealer of drugs or proceeds, you may find the interstate element satisfied."

All right. That's done. We now have a completed charge. And I'll get you a revised version before I give the charge, but you now know what I'm going to say for purposes of your summations.

All right. Where do we now stand? Government, your case is still on. When the jury comes in, what is the government going to say?

MS. BHASKARAN: When the jury comes in, the government is going to rest. I'll note for the record that the witness who, on Friday, indicated that he might testify continues to refuse to testify.

THE COURT: Continues to refuse to testify .

MS. BHASKARAN: Continues to refuse to testify.

THE COURT: All right. Fine.

All right. Then is the defense going to put on a case?

MS. MACEDONIO: Your Honor, we're going to introduce

1 one document, defense E, and that will be it. Then we'll rest.
 2 THE COURT: And does the government know what that is?
 3 Will there be any objection?
 4 MS. ESPINOSA: No objection, your Honor.
 5 THE COURT: All right.
 6 You're telling me the defendant is not going to
 7 testify.
 8 MS. MACEDONIO: No, the defendant is not going to
 9 testify.
 10 THE COURT: All right. I'm going to allocute him on
 11 that issue. All right?
 12 MS. MACEDONIO: Yes.
 13 THE COURT: All right. Mr. Pabon, if you would rise,
 14 sir.
 15 The government is about to rest. You heard that. And
 16 your lawyer has said that the defense case will consist of a
 17 single exhibit.
 18 Did you hear that?
 19 THE DEFENDANT: Yes, sir.
 20 THE COURT: All right. The issue now is whether or
 21 not you are going to testify in your defense. I can tell you,
 22 sir, as you know, that the decision of -- that you're under no
 23 obligation to testify. Indeed, the defense doesn't have to put
 24 on a case, because in a criminal case, under the Constitution
 25 of the United States, the defendant does not have to prove

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1 anything. The burden of proof is always on the government to
 2 prove the defendant's guilt beyond a reasonable doubt, and the
 3 defense doesn't have to prove anything.
 4 Do you understand that?
 5 THE DEFENDANT: Yes, I understand that.
 6 THE COURT: OK. Do you also understand, sir, that you
 7 have a right to remain silent, and anything you say, if you do
 8 decide to -- I'm sorry. Strike that.
 9 The decision of whether or not to testify is your
 10 decision.
 11 Do you understand that?
 12 THE DEFENDANT: Yes, I understand that.
 13 THE COURT: OK. Now, there are many, many decisions
 14 that are for the lawyers to make -- what witnesses to call,
 15 what questions to ask, what motions to make; those are for the
 16 lawyer to make.
 17 Do you understand that?
 18 THE DEFENDANT: I do, sir.
 19 THE COURT: But there are certain decision, important
 20 decision, such as whether or not to plead guilty or to plead
 21 not guilty, and whether or not to testify, that are yours and
 22 yours alone to make.
 23 Do you understand that?
 24 THE DEFENDANT: I understand that.
 25 THE COURT: Now, have you discussed -- I don't want to

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1 know what your lawyer told you. That's just for you and your
 2 lawyer to know. But have you discussed this issue of whether
 3 or not you're going to testify with your lawyer and whether or
 4 not you should testify? Have you discussed that with him and
 5 her?
 6 THE DEFENDANT: Yes, I did.
 7 THE COURT: OK. I don't want to know what the advice
 8 is, but I presume they gave you some advice. OK. Now,
 9 whatever their advice was, they can only give you advice. They
 10 can't make the decision. Only you can make the decision.
 11 Do you understand that?
 12 THE DEFENDANT: Yes, I do understand that.
 13 THE COURT: And what is your decision?
 14 THE DEFENDANT: My decision is not to testify.
 15 THE COURT: All right. Fine. Perfectly acceptable.
 16 Thank you, sir. I appreciate that.
 17 THE DEFENDANT: You're welcome.
 18 THE COURT: Is there anything else on the allocution
 19 that the government wishes?
 20 MS. ESPINOSA: No, your Honor.
 21 THE COURT: Defense, anything?
 22 MS. MACEDONIO: No. Thank you, your Honor.
 23 THE COURT: All right. Let's take 10 or 15 minutes.
 24 The jury has been very patiently waiting. Let's make it 10
 25 minutes. Refresh yourselves and come back.

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1 One juror is not there. That juror tested positive
 2 and that juror presented a positive test in a photo. So that
 3 juror is not going to be here. Take 10 minutes.
 4 (Recess)
 5 THE COURT: Please be seated.
 6 Everybody is here, including the defendant. You've
 7 heard the government say it's about to rest. I would prefer,
 8 rather than have the jury come out just to hear the government
 9 say the government rests and then go back in, let's have the
 10 argument on any motions now, if there are motions.
 11 Defense, are there any motions?
 12 MS. MACEDONIO: Yes, your Honor.
 13 THE COURT: Go ahead.
 14 MR. SCHNEIDER: Your Honor, it's our position that,
 15 pursuant to Rule 29, prior to the case being submitted to the
 16 jury, it's our position that the reliable, credible evidence
 17 was insufficient as a matter of law to sustain a conviction.
 18 And therefore, you have the power and the right to not give the
 19 case to the jury and grant a motion for dismissal pursuant to
 20 Rule 29(a).
 21 Thank you.
 22 THE COURT: All right. Thank you.
 23 It's going to be up to the jury here. There's
 24 adequate evidence by which a reasonable jury could conclude
 25 that the defendant engaged in a pattern of racketeering acts,

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that he belonged to an enterprise and committed the racketeering acts -- that is, that he's guilty of conspiring to enter into a racketeering enterprise and to engage in a pattern of racketeering activities; and so, too, that he engaged in murder in aid of racketeering under Count Two. So I'm going to deny the motions at this time.

Let's bring this jury in.

How long is the first government closing going to be?

MR. HOBSON: It is not going to be longer than an hour and a half.

THE COURT: All right. We'll try to conclude it before lunch.

MR. HOBSON: That should be fine, your Honor.

THE COURT: And you're doing it.

MR. HOBSON: Yes, your Honor.

(Continued on next page)

(Jury present)

THE COURT: Please be seated in the courtroom.

Good morning, ladies and gentlemen. I assure you we were handling legal matters. I hope you enjoyed the three days that you had for the weekend. It was a beautiful day yesterday, indeed.

Next witness for the government, please.

MR. HOBSON: Your Honor, the government rests.

THE COURT: All right. Thank you.

Ladies and gentlemen, you have now seen the government rest. We now will find out whether there is a defense case.

As you know, the defendant is under no obligation to prove anything. The obligation is always on the government. The burden of proof is always on the government to prove the defendant's guilt beyond a reasonable doubt. They have the right to put on a case. They don't have to put on anything.

Defense, is there a witness?

MS. MACEDONIO: No, your Honor. Just moving a document into evidence. We move Defendant's Exhibit E into evidence, your Honor.

THE COURT: Government.

MR. HOBSON: No objection.

THE COURT: All right. The defense has requested, and without objection, I've admitted defense exhibit E. (Defendant's Exhibit E received in evidence)

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THE COURT: Defense, anything?

MS. MACEDONIO: No. Thank you, Judge. The defense rests.

THE COURT: All right. Ladies and gentlemen, you have now seen the defense rest. There is no more testimony to come in. You have heard all the evidence. But you have not heard what the lawyers have to say they believe what the evidence was. We're about to hear that. But remember a couple of things.

I've already told you the order of closing arguments is set by law. The parties have no say in it. The government goes first, then the defense, and then the government. Because the government has the burden of proof, it gets the last closing argument. I want you to listen to what the lawyers have to say, but remember two things. And you know this.

What the lawyers say is not evidence. That's one.

The other thing I want you to know is that if the lawyer says he or she believes the evidence showed this or that, the lawyer doesn't decide what the evidence showed. You, ladies and gentlemen of the jury, decide what the evidence showed. You make up your mind as to what the evidence was in this case.

We are now going to hear the opening closing, as it were, of the government, by Mr. Hobson.

Mr. Hobson.

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Summation - Mr. Hobson

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MR. HOBSON: Thank you, your Honor.

The 200 claimed to represent their neighborhood around Dyckman Street, but what they really did was terrorize the neighborhood. They flooded its streets with drugs. They broke into its businesses. They robbed homes. And in their effort to dominate northern Manhattan, they turned that neighborhood into a war zone. If there were rivals were around, they didn't care about kids walking down the street or innocent civilians standing outside bodegas. They shot, and they shot to kill. And on October 2, 2014, they succeeded, when Christian Pabon and his fellow 200s let off 15 shots at a rival gang member and left Orlando Rivera dead.

Over the past few days, you've learned how the murder of Orlando Rivera made the defendant's reputation in the gang. He was a shooter. He was a killer. It was his job. He was Banga. You've heard how, after the murder, the rest of the gang knew they could count on him when they needed a gun. They could count on him when they wanted to rob someone. They could count on him when there were rivals to shoot. With the 200s, there was no shortage of violence, and there was nobody better at it than the defendant.

The evidence is in. It's clear. It's consistent. It proves that the defendant agreed to be part of the 200 gang and that he murdered Orlando Rivera in furtherance of that gang. Because of that, he is guilty of the two crimes that are

charged -- being a member of a racketeering conspiracy and murder in aid of racketeering.

In this summation, I'm first going to walk you step by step through the evidence you heard in this case. I'm going to show you how it all fits together. Then I'll talk to you briefly about the charges in this case and how the evidence proves that the defendant is guilty of both charges.

But first, I want to talk about a few things that aren't seriously in dispute here. Nobody seriously disputes that on October 2, 2014, there was a shooting near 193rd Street that left Orlando Rivera dead. Nobody seriously disputes that there were two shooters in that shooting. Nobody seriously disputes that one of the shooters was a man named Ito, who was a member of the 200.

(Continued on next page)

MR. HOBSON: And nobody disputes the legal point that Judge Stein told you at the top of this trial. You don't have to decide who fired the fatal shot because whether the second shooter fired the fatal shot or not, he can be guilty of the murder just by assisting in the murder.

What Count One, which is the racketeering charge, really comes down to is whether the defendant, like Ito, is also a member of the 200. You don't even have to find the defendant participated in the murder to find him guilty of Count One. And what Count Two, the murder charge, really comes down to is whether the defendant was that second shooter you see on the security footage that day, the one who is with Ito, the one with the long hair. By now, you know that the answer to both questions is yes.

So let's start by talking about the 200 enterprise itself.

Count One charges the defendant with conspiracy to commit racketeering. Judge Stein will instruct you on the law, and if he says anything different from what I say, it is his instructions that you should listen to; but I expect Judge Stein will tell you that a conspiracy is basically an agreement, and that a racketeering enterprise is basically a group of people who come together for a common purpose of engaging in a course of conduct, in other words, a group of people who commit crimes. The enterprise doesn't have to be a

formal entity. It can be informal. In other words, it can be a street gang like the 200. And to agree to be part of the enterprise, a person doesn't have to be a card-carrying member, it doesn't have to have a formal position, he just has to agree to commit crimes with them.

To see that the 200 were an enterprise and that the defendant agreed to be part of it, you can start by just looking at the defendant's own Instagram account. You see picture after picture of the same core group of people over and over for years promoting the 200 and bragging about their membership in the 200. Look at the name of his account. PrettiestGangsta200. It's right there in the name. He is a gangsta. What gang? The 200 gang.

Look at the name of his followers. Look how many have 200 or 2hunnit in their names, just like the defendant. Look how many have 5420 in their name. You heard how 5420 referred to 5420 Arden, which is one of the 200's headquarters in Dyckman where they sold drugs. They are all advertising their membership in this neighborhood gang.

Look at some of the pictures the defendant posts. There is a post from November 2014. It's about a month after the murder. Now, by now, you know some of the people that the defendant is with, who he is standing with in that picture.

There is Milton, the founder of the gang. He is the one with the 2hunnit tattoo on his neck.

There is the defendant pointing his fingers at the camera like two guns. You know what he is doing there. He is showing off his role as the gang's gunman.

There is Necio, there is Tito, two other members of the gang, and they are all making the hand sign that Raymond Castillo told you about —two end fingers up, two middle fingers folded down into zero, making a 200. He puts it right there in the caption. "Gang gang 100 100" because two 100s make 200.

Here he is again, Government Exhibit 305. He is flashing gang signs and look at the hashtag there. #200Gz, #TopGoonz. You heard what that means, 200 gangsters, top gangsters.

Government Exhibit 306, look what he posts on this picture. "Mobbin on the scene 100 100." Two 100s make 200.

Government Exhibit 307, here he is with Tito again. They are both making the 200 signal, two end fingers up, two middle fingers folded into zeros. Look at the hashtags on this one #FreeIto. He posted this in December 2014. It is just a couple of months after Ito was arrested for the murder.

Government Exhibit 313, here is another, January 2015, #200Block.

Government Exhibit 315, another, look at the hand signs they are flashing, 200. Look at the post. He uses emojis in this one to spell out the word gang. Remember the gas tank there is the letter G. He is spelling gang and then

200. You know what that means. It means this is the 200 gang. Look at the caption where he writes on this 2018 post, Government Exhibit 321. This post appears to be in honor of someone who died. You can tell the man was a 200 because he has the number 200 tattooed on his neck. The defendant wrote "2hunnit Gz till my eyes bleed." "2hunnit gangsters." Then look at the two emojis hands with two fingers up and two middle fingers folded down into zeros. It's the 200 hand sign as an emoji. This is the defendant telling everyone that he is 200 for life, until his eyes bleed.

He posts videos, too. Here is one from June 2017. You can see the defendant at a club with a whole group of guys, and you will see them flashing gang signs. Let's watch this one.

(Video played)

MR. HOBSON: Flashing gang signs. There is the defendant holding his fingers like a gun. Flashing gang signs. Flashing gang signs. There is that 200 sign. "Gang gang gang." That's what he said.

Look at the caption he posts. On this next -- one second. Let's switch to some private messages that he sends on his Instagram. These private messages, they also talk about the 200.

This one here is one from December 2021. That is just five months ago. This is the defendant talking about the rules

that he is a shooter.

Then look at January 2022. This is a post from just a few months ago. "Proud of you gangsta. Original200Steppas. Duce hunnits. These are all references to the 200s. The defendant wants everyone to know he is in the 200, he is one of the original members, and he is a shooter.

It is not just the social media. Look at Milton Chardon, the gang's leader. His tattoos make him a walking billboard for the gang. From the neck down, he is telling the story of the 200 in ink. At the top, "DNA 2Hunnit," meaning that the DNA that runs through his blood is the 200. Then he says "Dyckman World" meaning that Dyckman Street runs the whole word. And at the bottom "Ito gang." By now, you know what "Ito gang" is a reference to. It's a reference to Ito, who got caught for the murder of Orlando Rivera, but who didn't give up the names of his fellow gang members. By upholding the gang's code of not snitching, Ito came to stand for everything the 200s were supposed to be.

Now, if everyone in the 200 was like Ito and refused to cooperate with the government, your knowledge of the 200 might be limited to Instagram. But here you also know that the 200 is a criminal enterprise because you got to hear from three actual members of the conspiracy.

You heard from Raymond Castillo, known as "Raymito." He was one of the founders of the 200. He was one of the top

of the gang and how members need to support one another if they want to be in a gang. He says, "If anybody jacking my 2hunnit shit and not doing right by Georgy daughter a dub and to stop jacking my shit gangsta."

Now, some of those phrases probably weren't familiar to you before this trial, but P Mula, one of the witnesses, translated it for you. He told you that Georgy was the real name of a 200 who the gang called BY. You heard about B Y a few times in this trial because he and the defendant are the gang's two main shooters. We will be talking about him some more.

Jacking 2hunnit shit, that means saying that you are a 200. If someone is a dub, that means they are disloyal. So here the defendant is telling someone that if anyone is claiming to be a 200 but that person isn't supporting Georgy's daughter, they are disloyal and they have to stop saying that they are in the 200. And look how the defendant phrases it. He says, Those disloyal members need to stop jacking my shit. He is saying it right there. The 200s are his gang, and he doesn't want any disloyal people claiming to be in his gang.

Then he goes on, "Gangsta don't wanna hear nobody saying they gang and not doing nothing for bro #Original200Steppa." I want to focus in on that hashtag because P-Mula told you what that hashtag means. Steppa means shooter. So when the defendant says he is an original 200 steppa, that means he is one of the original 200 members and

leaders of the gang. You also heard from Luis Fedor, also known as "Lefty," and Peter Lopez, also known as "P-Mula." Lefty and P-Mula weren't official members of the 200, but for years they worked with the gang and they committed crimes with the gang. That made them part of the enterprise.

I want to talk about all three of these men for a minute. These three witnesses gave you an opportunity to see how the 200 worked from the inside. It is hard to imagine a better way to learn about how a criminal enterprise worked than to hear from a member of that enterprise. You got to hear from three. Their testimony alone establishes that the defendant is guilty, period.

At the beginning of trial, we told you these men are criminals. No one is asking you to approve of what they have done. They have committed serious and violent crimes. Nobody is denying that. That's why they were part of the 200 enterprise. If you are part of a criminal enterprise, if you are coming together to rob and shoot and deal drugs, you are involved with serious criminals. And only people who are actually involved in crimes like this can tell you from their experience how it was committed.

Some of the most heinous crimes that you heard those cooperating witnesses talk about were crimes they committed with the 200, sometimes alongside the defendant himself.

Remember, there is no serious question that the

1 defendant knows all three cooperators. You saw how he talked
2 about them on social media. Look at Government Exhibit 326.
3 Here he is on Instagram telling someone how Raymito, P-Mula ,
4 and Lefty are at the rat jail because they are testifying
5 against him. He is calling them out by name because he knows
6 them.

7 These men are testifying because they committed
8 serious crimes with the defendant. Let me be clear again,
9 nobody says you should like these witnesses, but that doesn't
10 mean you shouldn't believe them.

11 How do you tell if they are telling the truth? I'm
12 going to suggest you think about three things—their demeanor,
13 their incentives, and the corroborating evidence.

14 Start with their demeanor. Think about their tone,
15 their body language, the level of detail they provided. They
16 all admitted when they weren't sure about something. They
17 calmly and carefully responded to questions whether the
18 questions came from the government or from defense counsel.
19 They corrected even the small details that their questioner got
20 wrong. They candidly answered each and every question put to
21 them, including questions about their own criminal conduct.

22 Second, what about their incentives? You heard about
23 the cooperation agreements. There is nothing secret or
24 sinister about these agreements. Raymito's agreement is in
25 evidence. Take a look at it if you want to. You heard how

1 neighborhood, from Dyckman Street, which historically was 200th
2 Street. There it is on the subway tile. The 200 would be
3 united by their common neighborhood and they would represent
4 their neighborhood against other neighborhoods.

5 Raymito didn't mince words. He told you that the
6 purpose of the 200 was to take over the neighborhood, to
7 control the neighborhood. How were they going to do that? By
8 promoting violence and drugs.

9 Now, members could still be in other gangs. P-Mula
10 told you that some 200s were neutral, meaning that they were
11 only in the 200. And some 200s were also affiliated with other
12 gangs, like the Bloods. Raymito also told you that. But
13 Raymito told you the loyalty had to be to the 200 first.

14 The 200 had a lot of signals to show one another who
15 was in the gang and who wasn't in the gang. That's another way
16 you know that the 200 is an enterprise. You have seen the 200
17 hand sign—the two fingers up for the two, the middle fingers
18 folded down into a zero.

19 You saw Raymito stand up and demonstrate the handshake
20 for you. The handshake ended with the two interlocked hands
21 making a 200 sign.

22 You heard that when the 200s greet each other, they
23 say "two double O." All these gang signs were a way for the
24 200 to show each other who was in the gang and who was out of
25 the gang. And you have seen what the gang -- you have seen

1 these agreements work. If the witness tells the truth, the
2 government writes a letter to the sentencing judge and that
3 letter explains all the good things and all the bad things that
4 they have done. But if they lie, they lose that letter, they
5 lose the cooperation agreement, and they are still stuck with
6 their guilty pleas. Everything is riding on them telling the
7 truth.

8 And finally, you should look at the many other pieces
9 of evidence that corroborates exactly what Raymito and Lefty
10 and P-Mula each told you. Think about their testimony and ask
11 yourself did it make sense? Don't just ask yourself whether it
12 was consistent with one another. Ask yourself was what they
13 told you consistent with the evidence in this case, in
14 particular, things that you know are true, like photographs,
15 like video?

16 So let's talk about these witnesses, let's talk about
17 what they told you about the 200, and how it is backed up by
18 other evidence in the case.

19 Raymito told you all about how the gang was first
20 founded. It was back in about 2012. Raymito and Milton
21 Chardon were both in prison. Both of them were already in
22 other gangs at the time. Raymito told you he was a type of
23 Blood. Milton was a member of a gang called the Trinitarios.
24 But this new gang that they wanted to create would be
25 different. This new gang would be made up of people from the

1 that the gang members who were in the 200 wanted to show that
2 they were in the 200. They wanted to let others know.

3 Here is the 200's territory. The witnesses told you.
4 It is that entire area around Dyckman Street. They had two
5 headquarters. One headquarter was at Academy and Nagle. It is
6 marked there in red. The other at the corner of Sickles and
7 Sherman, also marked in red. You heard that the defendant was
8 usually at the Sickles and Sherman headquarters.

9 Now, the address of that spot or right across the
10 street from it was 5420 Arden. You have seen that the gang
11 made 5420 one of their sayings. Look right there. There is a
12 picture of Ito, Ito is wearing a 5420 shirt. On the right you
13 see a post from the defendant's account. He is using the 5420
14 hashtag. Lefty told you that 5420 was a pun about the drug's
15 gang dealing. It wasn't just the address where they sold
16 drugs. It was a reference to getting five bags of marijuana
17 for \$20, which is a common drug order.

18 There is the defendant and his fellow 200s
19 congregating in front of 5420 Arden, just like the witnesses
20 told you they did. The 200 fought for their territory. You
21 heard how they had intense, violent rivalries with gangs on
22 neighboring streets. They called them the gangs that were up
23 the hill because in that part of Manhattan , streets line 193rd
24 Street are actually uphill from Dyckman.

25 Raymito explained what these rivalries were about,

disrespect and territory. Violence would break out when the enemies came on to 200 territory or when the 200 would invade the rival's territory, which itself was a sign of disrespect.

Raymito told you how violent these rivalries were. They involved shootings, robberies, violent robberies. You heard about two major rivalries. The first one was with a gang just south of the 200's territory. Sorry, at the very bottom of the 200's territory. That gang was 6-Block. They owned the 160s. Raymito told you that the 6-Block feud started when someone from cellblock snitched by cooperating with the government. You have heard what the 200s think about cooperators. So when Milton found out that 6-Block had let cooperators stay in their gang, the war between 200 and 6-Block was on.

The 200's other main rival was OED. OED stood for two things—Own Every Dollar and One Eight Deuce, One Eight Deuce or 182, because their territory went from down around 182nd Street up to 193rd Street. And you heard that the 200s had beef with one part of OED in particular, the group that was based around 193rd Street. Sometimes they were called One Nine Three after their block, just like the 200 named themselves after their block. And you can see where the 200 and 193 would clash. 193rd Street was right at the border of 200s territory. It was a powder keg waiting to go off.

You heard about the leadership structure of the 200,

were the guys that he would call.

Let's go back to the structure. Beneath the shooters there were the other members. You heard some of their names, True, Necio, Moe, Mapes, Tito. These weren't all. These are just some of them. The gang started off small; Raymito told you just ten or 20 members in the beginning. But it grew. It grew to well over 40 or 50 members.

P-Mula told you at the beginning he thought the gang was silly, but then in 2014, there was the murder. That changed things. As P-Mula told you, you are not looking at them any more like a fake street gang. You are seeing them as kids that possibly can kill you. Now the 200 were all over Dyckman. Their numbers increased. P-Mula told you they basically multiplied.

And then you heard one very clear example of how to climb the ladder in the 200, and that was Ito. In 2014, Ito was arrested for the murder of Orlando Rivera. And as Milton told Raymito, Ito had shown his loyalty. He showed his loyalty by not cooperating. He didn't tell the government who else participated in the murder. That upheld the 200's code. That earned him respect. And what happened to Ito as a result? He moved up the ranks. He became a Big 200.

Now, the 200's code was important. You don't need to find that the 200 had any specific code or rules, but the fact that they had rules, that's another way that you know that the

who had power, how they got power. This is the core personnel right here. At the top was Milton. Then came Raymito and Dinero. They founded the gang along with Milton. The three of them were the leaders of the gang. They even had a title. If you were a leader, you were called a Big 200.

Below the 200 were the shooters. The cooperators told you how violence earned you respect in the gang. You saw that yourself in the social media. So it's no surprise that the members of the 200 who had guns and that could be called on when the enemies came would have a high level of respect. Raymito told you that there were at least two people who held that shooter position. BY was one of them. The defendant was another.

You heard that with being a shooter came authority, too. Raymito explained how at first it was only the Big 200s who could let new members into the gang, but later the defendant had that power, too. He had that power because he was the main shooter for the 200. That meant that if the 200 ever needed somebody shot or needed somebody to shoot up a block, they would call the defendant. That made the defendant respected. It made him almost like a Big 200. Raymito showed you some of the 200s that the defendant himself brought into the gang and that associated with the defendant -- and that associated with the 200 through the defendant. He called them Banga's Crew. He said that when Banga needed backup, these

gang was an enterprise.

Not just anyone could be in the 200. You had to earn your position. Raymito told you how that worked. You earned your position by putting in work. That meant doing crimes for the gang. What kind of crimes? Raymito told you, robberies, shootings, things of that nature.

But once you were in? That wasn't the end of things. You had to keep following the rules or else you would get kicked out. Raymito told you there are two main ways to get kicked out of the 200s: being weak or snitching.

You have seen what the 200s thought about the snitching, about telling the government about the crimes your fellow 200 had done. Look no further than Government Exhibit 326, which is that Instagram chat with the defendant from January of this year. Here he is talking about the cooperators in this case—Raymito, P-Mula, Lefty. "Damn. So Raymito really a snitch. Yeah, they just waiting on me to either cop out or go to trial. Then they go home. I'm the last one." What does the other guy say? "Oh, hell no."

This is powerful evidence that all three cooperators are telling you the truth when they talk about the defendant and his crimes. Because otherwise why would the defendant care? You know why he cares. He cares because he knows that those three men committed crimes with him. He knows that those men know what he's done. The gang depends on its members

1 staying silent so that they don't end up like the defendant.
2 The defendant knows that Raymito, P-Mula, and Lefty broke the
3 code. He knows what's going to happen to him as a result, and
4 he wants the rest of the gang to know it, too. Ito didn't
5 snitch, and Ito became a Big 200. Raymito, P-Mula and Lefty
6 snitched, and you see how the gang talk about them now.

7 So we have talked about what it meant to be a 200, how
8 you got into the 200, the leadership structure of the 200,
9 where the 200 operated, the signs the 200 used to identify
10 themselves, and the code the 200 followed. Now none those
11 things are required for a gang to be considered an enterprise,
12 but they are all ways that you know that this gang was an
13 enterprise.

14 There is also one other thing that defined the 200,
15 and that's their crimes. The 200 were a criminal enterprise.
16 Their members helped one another carry out crimes, all kinds of
17 crimes.

18 We are going to talk about three specific categories
19 of crimes that the 200 committed, robberies, drug dealing, and
20 murders.

21 Let's start with robberies and attempted robberies.
22 Raymito, Lefty and P-Mula told you about the kinds of robberies
23 the 200 committed. They robbed people on the street, men
24 wearing gold chains. They robbed drug dealers. They broke
25 into drug dealers' homes and they sometimes tortured those drug

1 refer customers to one another. He told you how they pooled
2 their money that they would make selling drugs to buy even more
3 drugs or to buy guns. and he told you how the 200s kept guns
4 around when they were selling drugs just in case rivals came
5 and tried to rob them. You heard that the 200 sold nearly
6 every drug imaginable—heroin, crack, cocaine, marijuana,
7 oxycodone, and others.

8 Finally, the 200 also worked together to commit
9 violence against rivals, including trying to shoot and kill
10 those rivals. Raymito estimated that the 200 attacked their
11 rivals four or five times every month. Some of those attacks
12 were shootings, where the 200 fired directly at their enemies.
13 Raymito told you about one shooting where he and Milton got in
14 a black Mustang and did a drive-by shooting at their enemies in
15 6-Block. He also told you about a shooting that the defendant
16 did, where the defendant went to a cookout 6-Block was throwing
17 in 200 territory and sprayed bullets all over the place.
18 That's a shooting we are going to talk about more in a minute.

19 And of course, as you all know too well from this
20 case, some of the shootings were more than an attempted murder.
21 In at least one of those shootings someone was actually killed.
22 There is no question the 200 were a criminal enterprise
23 committing some of the most serious crimes imaginable.

24 Now let's turn to the defendant and his role in the
25 gang. You have seen that the defendant was in the 200 and you

1 dealers until they gave up the location of the drugs or the
2 money. Raymito and Lefty both admitted that some of the
3 robberies they did with the 200 involved using hot irons or
4 holding someone down in water until they gave up the
5 information. In some of these robberies they held victims up
6 at gunpoint. You heard how the 200 would work together to
7 identify potential victims, how they would then team up to get
8 guns, make a plan, and rob the victims. Raymito told you that
9 he personally committed at least 20 robberies with the 200.

10 Then there is the drug dealing. Again, Raymito,
11 Lefty, and P-Mula all told you about the 200 working together
12 to distribute drugs. Sometimes this drug dealing overlapped
13 with the robberies, like when they robbed drug dealers. They
14 would then give those drugs to other 200s who sold those drugs
15 on the street. Sometimes they got the drugs by going into a
16 pharmacy after hours with a crowbar and stealing drugs like
17 Percocet. Sometimes they would get those drugs through a
18 practice they called breaking. That was the practice where
19 they would pretend to sell a large quantity of drugs, but it
20 would really be just a little bit of real drugs and the rest
21 was fake. Or they would pretend to buy drugs but the money was
22 fake counterfeit money.

23 You heard how the 200s operated drug spots around
24 Dyckman, like the one in front of 5420 Arden. Raymito told you
25 how the 200s would work together in shifts, how they would

1 have seen that his role was to commit violence and to be a
2 shooter.

3 Let's look at some more of his social media. P-Mula
4 told you how the defendant liked to carry a razor blade in his
5 mouth. The defendant was so proud of doing that that he
6 actually posted a video of it online. Here is that video,
7 Government Exhibit 317B. Let's play it.

8 (Video played).

9 MR. HOBSON: He showed the razor, then he made a gun
10 sign with his hand. Watching that video, you know the
11 defendant wants to know -- wants people to know that he is
12 someone to be feared.

13 That's not the only video the defendant posts bragging
14 about his violence. Look at this rap video. He posted it with
15 the caption "whole lot of gang shit." Listen to the words they
16 use to describe the gang's crimes. "Banga, he run up on you,
17 snatch your chain, snatch your drugs." The defendant nods
18 along as they are saying those lines. He holds his hand out
19 like a gun. He pretends to pull the trigger. He is admitting
20 to robbing people. He is admitting to being violent. Here is
21 the video.

22 (Video played)

23 MR. HOBSON: Actually holding drugs in his hands it
24 looks like.

25 "Snatch your chain. Snatch your drugs. Banga's going

to run up on you," and you know that that's exactly what the defendant did.

Here is another picture he posts. Look at the caption he posted with this picture. "I was up on da block with a Glock in my hand." You heard that a Glock is a type of gun. This is the defendant admitting that he held guns for the gang on the block.

His signature move is to point his fingers at the camera like he is holding a gun. Here are just a few of the examples. Here are examples from the video we just watched. He wants everyone to know he is the guy who shoots. Look at the defendant -- the defendant's nickname, Banga. Look at his Instagram account. The Bang Man. Raymito told you why he called himself that, because he had a reputation for playing with guns. Banga is the bang of a gun.

Raymito told you why it was important to know who the shooters were in the 200. The gang was committing a lot of violence. They had a lot of enemies. You needed to know who to go to if you needed a gun. You needed to know who to call if you needed help attacking a rival or doing a robbery. Raymito told you. "If something happened and we needed somebody shot, we relied upon him." The defendant. They relied on him because "he wasn't scared to shoot a gun." Raymito had seen the defendant with all sorts of guns, a .380, .38, 9 millimeter. The defendant always had a gun either at

this loaded gun in 200 territory.

Now, the defendant is charged with agreeing to participate in the 200 enterprise. I expect Judge Stein will tell you that to be guilty of Count One, the defendant didn't have to personally carry out a single robbery or a single drug deal or a single attempted murder. It is enough if he agreed that others in the gang would commit at least two of those crimes. But here you know that the defendant didn't just provide guns for other members of the 200. The defendant actually used those guns himself. The defendant didn't just agree that others in the 200 were committing crimes. He actually committed crimes himself.

Let's start with the robberies. You heard of about five robberies or attempted robberies that the defendant committed. No less than five separate incidents. These were crazy and dangerous robberies.

There is the time he saw a man in a car stopped at a red light and the defendant pulled out a gun, pointed it at the driver and stole the man's Rolex watch while the man was stopped at a traffic light. That is truly terrifying.

There is the time Raymito and P-Mula wanted to rob a guy's chain, so they set the guy up on a fake date, then the defendant pulled a gun on him.

There is the time P-Mula and the defendant waited outside a man's building with a gun trying to catch him and rob

his house or on his person.

Lefty told you the same thing. He said he saw the defendant with a gun almost every time he saw him.

P-Mula, too. Banga was known for being tougher than the others, for carrying guns, for not playing. He had this respect and, like, basically if you crossed the line, he would do something to you.

All three witnesses told you that everyone in the 200 knew the defendant was a shooter, that he had guns, and that he could be counted on to do violence. Raymito, Lefty, and P-Mula all told you about times that the defendant either gave them a gun for a robbery or brought a gun to a robbery. These three members of the conspiracy knew what every other member of the 200 knew: If you needed a gun, you went to Banga.

You have even seen one of his guns. Here it is. It's in evidence. Government Exhibit 604. The defendant stipulated that on September 11, 2015, the defendant was arrested in the Dyckman neighborhood riding in a car where police recovered this loaded 9 millimeter firearm from right near where this defendant had been sitting. Remember, a 9 millimeter, that's one of the guns Raymito had seen him with.

After that arrest, the defendant pled guilty to attempted possession of a weapon. Part of why you know that the defendant carried guns for the 200, just like the cooperators said he did, was that in 2015, he was arrested with

him.

There is the time Raymito and the defendant hunted down a party promoter in their car all through Manhattan before losing that man in traffic. The defendant brought a gun to that robbery, too.

And there is the time that the defendant was in Miami. He didn't have a gun with him, but he had a scalpel with him, and he used that scalpel to beat up a gang rival and steal that rival's Porsche. He did that robbery while another gang member held up a cell phone and filmed it on FaceTime so Raymito could watch it happening. Those are the five robberies that the defendant personally participated in.

Then there is the drug dealing. You heard the one way the 200 dealt drugs was by breaking, where they would sell fake drugs or buy real drugs with fake money. You heard about at least one time when the defendant broke. The defendant called P-Mula, said he had a guy in Brooklyn who wanted to buy marijuana, so the defendant and P-Mula got five or six pounds of rabbit chow, passed it off as marijuana and sold it for over \$10,000.

You also heard about how important the defendant's guns were for protecting the gang's drug operation on Dyckman. Raymito told you how important it was for 200 to have guns nearby when they were selling drugs. They needed those guns to protect the drugs in case rival gang members showed up. This

means that the defendant's guns that he was out there carrying were crucial to keeping that drug business going.

Finally, murders and attempted murders. We will of course talk about the murder of Orlando Rivera in a minute, but that's not the only one of the defendant's shootings that you heard about. There is also the time that the defendant shot up the 6-Block cookout. Raymito told you about the summer day in about 2017 when 6-Block, the rival gang, made the mistake of having a cookout in 200 territory. They held that cookout in the schoolyard outside Public School 5, which was a public school near Dyckman Street.

Once the rivals had been spotted, the 200 sprung into action. It was the defendant and BY, they took their guns down to the playground and they opened fire. It made sense that it was the defendant and BY. They were the two main shooters in the gang. It was their job to do shootings like this. They let off about 17 or 18 shots then came running back up the street breathless, reporting their work to the gang leader Raymito.

The defendant personally reported to Raymito that he had "lit it up." They all then listened to the news and found out that no one was hit. When they found that out, they made fun of each other for missing. That is because they hadn't intended to miss. They had intended to hit their target. They had intended to kill a rival. It's hard to intend anything

Orlando's murder or not. But of course by now you know the defendant did take part in Orlando's murder and that he did it in furtherance of his membership in the 200 and that his reputation as a shooter, his reputation as a killer grew even stronger as a result. So let's turn to that murder now.

You know by now that on October 2, 2014, at about 6:30 p.m., three people were shot. They were shot standing in front of a bodega on Saint Nicholas Avenue, right where Saint Nicholas meets 193rd Street. You know why that location matters? 193 was one of the 200's main rivals, and 193 was based on 193rd Street. It's right by the hill that was the boundary between 200's territory and OED's territory. You have heard the 9-1-1 calls from panicked people on the street. You have seen the video. You have seen the shell casings and bullet fragments that were found all over the scene, at least 15 shell casings and bullet fragments. There they are at the crime scene.

Here are the actual pieces of evidence, Government Exhibit 601. Detective LaCova told you that he examined this ammunition, that in his expert opinion the ammunition on the ground came from two different guns. That probably doesn't surprise you because you had already seen the security footage.

You already saw that there were two shooters.

You have heard from the medical examiner who performed Orlando's autopsy. He described the path of the bullet, how it

else when you fire 18 shots.

By now it is clear. The 200 was a criminal enterprise. Remember, an enterprise just needs to be a group of people who come together for the common purpose of committing crimes. But here you have seen so much more about the 200 enterprise. It had leaders. It had a code. Don't snitch. It had ways to identify who was a member and who wasn't a member, the secret handshakes, the hand signs. It had membership requirements and it had expectations of its members. If you didn't meet those expectations, you were kicked out of the gang.

Also, the 200 worked together to commit serious, dangerous crimes. They worked together to sell drugs, heroin, crack, cocaine, marijuana, Percocet.

They worked together to commit robberies, sometimes brutal, violent robberies. They worked together to commit violence against their rivals, even to the point of trying to kill members of those other gangs. And the defendant participated in all of those crimes.

That's Count One. The defendant agreed with others to be part of a criminal enterprise known as the 200. Guilty.

You will also notice that I have hardly said a word so far about the murder of Orlando Rivera. That's because you don't need it for Count One. The defendant is guilty of being part of the racketeering conspiracy whether he participated in

entered Orlando's lower back, traveled through his kidney, his liver, his diaphragm, how it broke a rib, punctured a lung, and exited through his upper back. He told you what he determined to be the cause of death—gunshot wound to the torso. And he told you that the wounds were consistent with Orlando being shot in the back while being hunched over, trying to protect himself, just like you saw in the video.

You also know by now who the two shooters were — Marcos Espinal, also known as Ito, and the defendant, Banga.

Let's talk about all the ways you know that the defendant was one of the shooters.

Now, we talked earlier about the defendant's Instagram chats where he tells someone that the only evidence against him is the words of cooperating witness. Here he is. He is saying: They don't have nothing on me. They only got them three cooperators saying that I was a shooter.

Now, it's true, the testimony of those three cooperators is powerful, powerful evidence, but it's far from the only evidence. In fact, you do not need the cooperators to know that the defendant shot at Orlando Rivera. So I'm going to save the cooperators for last.

Instead, let's start with the security camera footage of the murder. Let's watch Government Exhibit 912A. This is the compilation video that Mr. Piazza made. All of the underlying footage is in evidence, too. You can watch as much

1 of it as you want, but Government Exhibit 912A, this is the one
2 that pieces together all of the different camera views in
3 order.

4 I am going to play it through it now. I'm going to
5 point out some things to pay attention to. Then we are going
6 to go back and we are going to break it down piece by piece in
7 a little more detail. So let's start.

8 (Video played)

9 MR. HOBSON: This is shortly before the murder.

10 And look right there. You see that burgundy van
11 arrive at the scene.

12 About 35 seconds pass. Now you see four men start to
13 walk towards the corner, that one there, wearing those bright
14 orange shoes and gray hoodie, another one in blue, and this man
15 here circled with multicolored pants and a white sweatshirt
16 pulled over his head. Here's the fourth man. He is carrying
17 what looks to be either a bat or a lead pipe. You see him drop
18 that up the street.

19 Now, up here, here is the shooting in the distance
20 here. Zoom in on it. Shooting. Bang, bang, bang. They run
21 away.

22 Look right there. Second shooter with a gun in his
23 hand.

24 Here is another angle. There is Orlando standing
25 there in the striped shirt with a group of people. Shot. He

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1 hair of that second man. You can see that it is long, in
2 braids or dreads, and it's kind of pulled back into a bun. We
3 are going to see a few different shots of this. And it is that
4 man in the multicolored pants that we really want to focus on.
5 Let's see if we can get a different view here.

6 This is from further down the street. So now you are
7 going to be looking face on to the men as they walk down.
8 Let's look at the man in the multicolored pants, sweatshirt
9 over his shoulder, long hair or braids. Here he is from the
10 back. You see those multicolored pants, the white sweatshirt,
11 the hair. Still with those other men that you saw at the scene
12 of the shooting.

13 Okay. That's the compilation video, but I told you we
14 would break it down into some specific shots, so let's do that
15 now.

16 First, let's compare the men on the street to the men
17 who get out of the van. Because as much as the shooters try to
18 hide from the security cameras by wearing hooded sweatshirts,
19 they still can't escape their distinctive clothing. We are
20 going to take a side-by-side look at each of the four men.
21 Let's start with the shooter who was wearing those bright
22 orange sneakers. They are almost glowing. He is wearing those
23 same sneakers in the parking lot, the parking lot picture is on
24 the right. The scene of the shooting is on the left. It's
25 those same orange sneakers, same gray hoodie, the same ripped

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1 is hit. He runs. He falls. Zoom in on the shooters. You can
2 see there are two. You can see the muzzle flash. You can see
3 they are jumping up and down as they shoot. Then some time
4 passes. It is just a few minutes according to the time stamps
5 here.

6 And then we go to a commercial parking lot that is
7 just about a mile away. A couple minutes later, that red van
8 pulled into the commercial lot. There is a shot from deeper in
9 the lot that allows us to see the people getting out of the
10 van.

11 You have a few different views of this. It's the man
12 in blue, the man with two-tone sweater and, look, circled
13 there, there are those multicolored pants. Now he's changed
14 into a red top, but you can see he still has that white hooded
15 sweatshirt in his hands. You are going to see him put it over
16 his shoulder.

17 This is a view from deeper in the parking lot. See
18 the men all getting out there. You have got to look closely,
19 but you can still see there is a man who has put on the red top
20 now. There they are, briefly going back to the van. Here is
21 our man, the multicolored pants holding that white sweatshirt.

22 Now we are going to get a different view of them, try
23 to make out their faces, some of their features. Here they are
24 leaving. See the white sweatshirt draped over his shoulder.
25 There they are again. You also notice that now you can see the

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1 jeans. Look closely. They are ripped in a very specific way
2 there, almost sliced open. Now, you know that's Ito. You know
3 that because you saw that the police searched Ito's apartment
4 and they found orange shoes just like that.

5 Then we have the man who brought that bat or the lead
6 pipe, and both of these shots, the left is the murder scene,
7 the right is the parking lot, both of these shots, he is
8 wearing those light khaki pants, he is wearing a hoodie, and he
9 is wearing that two-toned vest. It looks almost like it is a
10 sweater on top.

11 Then we have the third man with blue jeans and a
12 bluish gray hoodie. You see him here in the parking lot as he
13 is changing his clothes. That's the middle picture and the
14 right picture. He is taking off the hoodie and he is putting
15 on a vest instead. The left picture, that's him at the
16 shooting when he is still wearing the hoodie.

17 And finally we have got the second shooter. There he
18 is, running away next to the man in the orange shoes, still
19 with the gun in his hand. You can see the gun in all three
20 shots there.

21 Now, at the scene of the shooting, on the left, he is
22 wearing a white hooded sweatshirt. In the parking lot, he
23 switched the white sweatshirt for a red top, but he still has a
24 sweatshirt right there over his shoulder. You see the same
25 gray sneakers and, most importantly, you see those multicolored

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1 pants. You know that the second shooter is the man in the
2 **multicolored pants.**

3 And let's just focus a minute on those pants. Here is
4 one of the clearest shots, Government Exhibit 912U. They are
5 almost camouflage. Those are extremely unique pants. But this
6 isn't the only place you have seen pants like that in this
7 trial. You have seen pants like that somewhere else, too.
8 Look at Government Exhibit 311. This is a picture that the
9 defendant posted on his Instagram account about two months
10 after the murder. Look at the defendant. Look at those pants.
11 Look at the greenish and white spots. Look at them side by
12 side. Two months later, you can see those are the very same
13 pants.

14 But that's not all. There is another way you know the
15 shooter in the video is the defendant. Let's look at his face.
16 Look at his hair. Here is a close-up. Government Exhibit
17 912S. This is the same man we tracked all the way from the
18 shooting. This is probably the clearest shot of his face. You
19 will notice a few things about him. You see he has a prominent
20 forehead, almost with a bulge. You see he has a sharp jaw
21 line. You see there is a faint line of facial hair along the
22 jaw line. And you see his hair. It's long, down to the
23 shoulders. It's pulled back at the top and it's in dreads or
24 braids.

25 Let's talk about those more closely. Let's really

1 **examine this evidence.**

2 First, the forehead. The close-up security footage
3 shows that the shooter has a bulging forehead. There is almost
4 a ridge there. You can see how the light hits it. It is like
5 shadow underneath. Look at these pictures of the defendant.
6 Look at the defendant. He is sitting right in front of you .
7 This is the same man. His forehead juts out in a bulge, just
8 like in the security camera.

9 Second, look at the jaw line. You can see that the
10 shooter has a sharp jaw line and a pointed chin. It looks like
11 a little bit of a beard at the very end. Compare it to the
12 picture of the defendant in Government Exhibit 308. It's the
13 same jaw line.

14 And then there is the hair. Long braids or dreads
15 down to the shoulder pulled back in a bun. Now look at
16 Government Exhibit 303. This is a post from the defendant's
17 Instagram. The picture was taken on October 18, 2014. That's
18 just two weeks after the murder. Look at the hair. It's the
19 same hair. It's even pulled back at the top in the same way.
20 It's the same length down to the shoulders. The angle of this
21 picture isn't a side angle like the security camera shot, but
22 still you see that prominent forehead here, you can see the jaw
23 line, you can see the line of facial hair along the jaw. It's
24 the same man.

25 That hair is damning evidence. Even the defendant was

1 scared his hair was going to give him away, so what did the
2 defendant do? He cut his hair. Every witness told you the
3 same thing.

4 Lefty told you how a few weeks after the defendant
5 told him about the murder, he saw the defendant again and the
6 defendant had shaved his dreads.

7 P-Mula told you how, in 2014, the defendant always had
8 dreads, but then later he shaved them.

9 Raymito told you that the defendant expressly told him
10 that the reason he shaved his head was because of the murder,
11 and you know that's true from social media. Here's the
12 defendant's post from October 2014, Government Exhibit 303, and
13 here's the defendant's post from November 2014, a month later,
14 **Government Exhibit 305.**

15 You know why the defendant cut his hair. He cut his
16 hair because when he shot at Orlando, he had distinctive long
17 hair and he didn't want to get caught. But you have seen the
18 old pictures from his Instagram. You have looked at them side
19 by side with the security footage. You know it is the same
20 person.

21 But there is more. It's not just the video. There is
22 another way you know the defendant was the shooter. You know
23 it because the defendant dropped his cell phone at the scene of
24 the crime. Remember that cell phone that was found at the
25 scene of the shooting. There it is, right in the middle of all

1 the shell casings, the one marked number one. The police found
2 it in the middle of the street near where you saw the shooter
3 standing in the video. The battery had fallen out. Think
4 about what that shows you. One of the shooters must have
5 dropped it while he was jumping up and down, firing shot after
6 shot and then running away. The battery popped right out when
7 it hit the pavement.

8 That phone was searched. You have the contact list.
9 Government Exhibit 101. You see some names there that you will
10 recognize. Milton 200, Moe, Necio, Tito, these are all names
11 of 200s that you have seen in pictures with the defendant.
12 That tells you that the person who dropped this phone at the
13 scene of the shooting was a 200.

14 But there is more. There was another cell phone that
15 was found in the van. That phone was also searched. You have
16 that contact list. Government Exhibit 102. Look at some of
17 the names in there. Jerry200, Beezy200, Tito, Necio, members
18 of the 200.

19 Then look at the summary chart Government Exhibit 801.
20 This chart just summarizes some of the data that is there in
21 Government Exhibits 101 and 102. These numbers in 801, they
22 are all the common contacts between the phone on the street and
23 the phone in the van. Look at all the numbers that appear in
24 both phones. Look how many have 200 in their name. This tells
25 you that the men you see on video doing the shooting are the

1 same men you see get out of the van. This tells you that those
2 **men were part of the 200s.**

3 But it tells you even more than that. Because there
4 is a name in the van phone's contact list that isn't in the
5 street phone's contact list. That's the defendant's name.
6 **Banga.**

7 And what's listed as Banga's number? 917-557-7673.
8 What's the number for the phone that was found on the street,
9 the phone that one of the shooters dropped as he ran away?
10 917-557-7673. The phone on the street was Banga's. The phone
11 that was dropped at the crime scene was the defendant's phone.
12 This is damning evidence. It shows that the defendant was
13 standing right there firing the gun, spewing out those shell
14 casings that covered the ground. It shows that the defendant
15 was the second shooter. The hard evidence leaves no reasonable
16 doubt. The defendant is right there on the video with his
17 hair, his face, his pants, and then he drops his phone at the
18 scene.

19 (Continued on next page)
20
21
22
23
24
25

1 said, "He was feeling himself." He was a little bit hyped
2 about it. "Everybody was respecting him around him, so he was
3 feeling good about it." You know why the defendant was
4 excited, because violence is a way to get respect in the 200,
5 and the defendant had just proven to everyone that he was a
6 killer.

7 Lefty told you how after the murder the defendant had
8 more respect because people knew he was a shooter.

9 You also know that the conversation that the defendant
10 had with Lefty had to have been just days after the shooting.
11 You know that because Lefty remembered that the defendant still
12 had his long hair. About a week later, Lefty saw the defendant
13 again but with short hair. He asked why the defendant cut his
14 hair, and the defendant said he did it because of the incident,
15 so nobody could recognize him.

16 Now, you heard that when the defendant told Lefty
17 about the murder, he emphasized that it was his gun, the
18 defendant's gun, that killed Orlando. That seems to have been
19 important to the defendant.

20 Now, I'm going to talk about the law in a little bit,
21 but when I do, you'll see that the defendant is guilty of Count
22 Two whether or not his bullet is the one that killed Orlando,
23 because he's charged with aiding and abetting that murder.
24 You'll hear that aiding and abetting basically means the
25 defendant assisted someone else to commit the murder, and you

1 MR. HOBSON: This is overwhelming evidence, and it's
2 before you even before you get to anything that the cooperators
3 have said. You know from the hard evidence that the defendant
4 was one of the shooters.

5 But now let's turn to the cooperators and all the
6 times the defendant admitted that he was part of the murder.
7 You heard from multiple witnesses that the defendant was proud
8 of this murder. He bragged about being one of the shooters.
9 He admitted that he shot the rivals that day. He admitted that
10 he killed an innocent man.

11 And let's just step back. These three cooperators
12 have no idea about the defendant's pants. They haven't seen
13 that blown-up picture of his face. They don't know that he
14 dropped his phone at the scene. All of that is important
15 corroboration that they're telling you the truth.

16 Let's start with Lefty. Lefty told you how in 2014 he
17 was on the streets, committing crimes with the defendant and
18 committing crimes with the 200. One day he was with a group of
19 200s right in front of their headquarters at the 5420 building.
20 The defendant was there, and the defendant was telling everyone
21 about the murder. Here's what the defendant was saying that
22 day.

23 Lefty said: I remember Banga saying that his gun was
24 the one that killed the person. Lefty told you how the
25 defendant was acting when he talked about the murder. Lefty

1 know that whether the bullet that killed Orlando was fired by
2 the defendant or fired by Ito, they were both assisting one
3 another in that murder. They both deliberately fired in the
4 same direction. They both went there to the scene together,
5 armed. Gunfire from two guns was twice as likely to hit their
6 intended target, to provide cover for one another in case the
7 enemies returned fire and to help each other get away. They're
8 both guilty regardless of whose bullet killed Orlando, but at
9 the same time, the defendant certainly believed that it
10 mattered who fired the kill shot, and the defendant wanted
11 everyone to know it was him. It was important to his
12 reputation in the gang. Just a short time after the murder,
13 there he is with Lefty giving all the details and letting
14 everyone know he was a killer.

15 Lefty, of course, is not the only one who heard the
16 defendant admit to the murder. Let's look now at what Raymito
17 told you. Remember, Raymito was still in jail in 2014, but he
18 was getting regular updates about the 200s, and one day in
19 2014, his cofounder, Milton, called him up. Milton said that
20 the rivals on 193 had jumped him but that the 200 had, quote,
21 evened the score. Raymito asked him how did they even the
22 score, but Milton didn't want to give details over the phone.

23 That's when Raymito knew it was something serious.

24 The day Raymito got out of jail, Milton picked him up,
25 and then Milton gave him the full story. Milton told Raymito

1 that Ito and Banga had gone to 193 territory to shoot at the
2 rivals. They both shot, and Banga's bullet struck an innocent
3 bystander and killed him. It's exactly the same thing Banga
4 told Lefty. Milton also said that it was Ito that got arrested
5 and that, so far, Ito had refused to tell the police who else
6 was involved.

7 A little later, Raymito spoke directly to the
8 defendant. Raymito said to him, I hear Ito's holding it down
9 for you, meaning Ito isn't cooperating against the defendant.

10 The defendant said yeah, but we don't talk about that.
11 Why don't they talk about it? Raymito told you why. At that
12 point, Ito hadn't pled guilty yet. There was still a chance
13 Ito might cooperate. But then Ito did plead guilty, and
14 Raymito told you how at that point the defendant gave him all
15 the details. You'll hear what he said. The defendant told
16 Raymito that they were shooting at some OED guys, and the
17 victim happened to get hit. The defendant told Raymito that he
18 felt kind of bad for Ito because it wasn't Ito's bullet that
19 initially killed the guy; it was his. It was the defendant's
20 bullet.

21 Again, you see the defendant wanting others in the
22 gang to know he's a killer. It's the very same version of the
23 story over and over.

24 And it wasn't just the defendant who talked about the
25 murder. Other people in the 200 talked about the murder too.

M5aWpab4 Summation - Mr. Hobson

1 Everyone in the 200 knew that the defendant
2 participated in the murder, and now you know it too. Let's
3 just review some of the ways you know that he was one of the
4 shooters.

5 The shooter was wearing the same pants the defendant
6 was wearing. The shooter and the defendant have the same
7 forehead. The shooter in the video has the defendant's
8 jawline; has the defendant's hair. The defendant cut his hair
9 right after the murder. That shows that he was worried about
10 incriminating video. He knew there might be incriminating
11 video because he knew that he did it.

12 The defendant's cell phone was at the murder scene,
13 right there, where the shooters had been standing while they
14 were shooting. The other shooter, Ito, was in the same gang as
15 the defendant. The defendant told Lefty he committed the
16 murder. The defendant told Raymito that he committed the
17 murder.

18 Milton told Raymito that the defendant committed the
19 murder. Milton's the leader of the gang. It's Milton's job to
20 know who's doing what in the gang. Milton told P-Mula the
21 defendant committed the murder. Four other members of the gang
22 told Raymito that the defendant committed the murder. There
23 can be no reasonable doubt the defendant was one of the
24 shooters. That's Count Two. Guilty.

25 That's the evidence.

1 Other 200s who had actually watched the shooting. We've
2 already talked about what Milton said about the murder, but
3 there were also four other members of the 200 who went to 193
4 territory to watch the shooting, and each of them told Raymito
5 what they'd seen: True, Moe, Necio, and Mapes. There they
6 are. Each of those members of the 200 told Raymito that they
7 went to 193 for the express purpose of watching the shooting.

8 Think about what that means. That meant that they
9 knew ahead of time what was going to happen. That shows you
10 that this shooting was a planned gang attack. Each of those
11 witnesses also told Raymito what they saw that day. They saw
12 both the defendant and Ito shoot, and from what they saw, they
13 thought it was the defendant whose bullet killed Orlando.

14 You also heard about the murder from a third witness.
15 That's P-Mula. P-Mula got all the details directly from
16 Milton, the leader of the gang. Milton said that he himself
17 had been part of the group that did the shooting. He said that
18 Banga and Ito both fired. He said that Banga's bullet hit an
19 innocent man and killed him.

20 Everyone in the 200 knew what happened. Ito and Banga
21 went into enemy territory to shoot their rivals, and they
22 killed an innocent man. Their reputations were made off the
23 shooting. Ito became a Big 200. "Free Ito" became a hashtag
24 in the gang. And Banga solidified his reputation as the bang
25 man. Raymito told you why -- because of shootings like this.

M5aWpab4 Summation - Mr. Hobson

1 Now let me turn briefly to the law. As I've said, I
2 expect Judge Stein to explain the law on each of the two counts
3 in more detail. If anything I say is different from what Judge
4 Stein says, obviously what he says controls, but I want to
5 briefly highlight a few things I expect you'll hear about.

6 Let's start with Count One, which charges the
7 defendant with racketeering conspiracy.

8 At its core, this count charges the defendant with
9 agreeing with at least one other person to participate in the
10 conduct of an enterprise called the 200, which affected
11 interstate commerce through a pattern of racketeering activity.

12 We've already discussed how the 200 is an enterprise;
13 how it sold drugs that moved in interstate commerce; how it
14 broke into businesses that engaged in commerce. We've also
15 discussed how the 200 engaged in four types of racketeering
16 activity: Acts involving murder, which includes not just
17 actual murders but attempted murders; acts involving robbery
18 under New York law, which includes attempted robberies; acts
19 involving robbery under federal law, which here, basically
20 means robbing drug dealers, and it also includes attempted
21 robberies; and four, drug dealing.

22 One thing to keep in mind is that you don't have to
23 find that the defendant himself committed any racketeering
24 acts. It's enough that he knew and intended that someone else
25 in the gang would commit at least two racketeering acts.

1 There's no question that the defendant agreed to participate in
2 an enterprise, the 200, that committed these sorts of crimes.

3 If you find the defendant guilty of Count One, you'll
4 see that the verdict form you have to fill out asks you what
5 types of racketeering crimes were involved in the offense.
6 These are those types of racketeering crimes. And you don't
7 have to find any specific incidents or who in the gang carried
8 them out, just the general category of crime that you find the
9 200 committed. There will be a box to check for acts involving
10 murder, acts involving state robbery, acts involving federal
11 robbery, and drug dealing. You should check each type of
12 racketeering crime that's been proven.

13 There will also be a box for you to check under Count
14 One if you find that the racketeering activity agreed to by the
15 defendant included the murder of Orlando Rivera. Again, you do
16 not have to find that the defendant participated in that murder
17 to find the defendant guilty of Count One itself, but if you do
18 find the defendant guilty of Count One and you do find that the
19 racketeering activity he agreed to included the murder, you
20 should check that box too.

21 Then we get to Count Two -- murder in aid of
22 racketeering. This means that the defendant murdered Orlando
23 Rivera, or aided and abetted another person doing so, at least
24 in part, for the purpose of increasing or maintaining his
25 position in the 200.

M5aWpab4 Summation - Mr. Hobson

1 mattered who fired the fatal bullet, but it doesn't matter. It
2 doesn't matter because Ito and the defendant both did that
3 shooting. They planned it together. They carried it out
4 together. They're both guilty.

5 I'm about to sit down now. Before I do, I want to
6 thank you for your time and attention. This hasn't been a long
7 trial, but it has been an important trial. Every one of the
8 defendant's victims is important. The men he attempted to rob
9 at gunpoint are important. The people at the schoolyard
10 cookout that the defendant shot up, they're important. The
11 residents of Dyckman Street, who were terrorized by the 200s,
12 are important. The two people who were hit in the October 2014
13 shooting but survived their injuries are important. But I want
14 to spend my remaining time focusing on Orlando.

15 Orlando Rivera got caught in the middle of senseless
16 gang violence, and he was running for his life when a bullet
17 hit him in the back, killing him. That shooting was almost
18 eight years ago. The defendant thought he got away with it.
19 He thought he was safe after he cut off his long hair. He
20 thought he was safe after Ito followed the code and didn't
21 snitch. And then, once the defendant thought that he'd gotten
22 away with murder, he doubled down on the gang. He doubled down
23 on the 200. He rose in power. He committed more violence, and
24 he bragged about it, in person and online.

25 What the defendant didn't count on was that one day

1 Now, I told you earlier that I was going to talk about
2 why it doesn't matter whether it was the defendant's bullet or
3 Ito's bullet that killed Orlando. I expect that Judge Stein
4 will instruct you that the defendant can be convicted if he
5 either committed the crime himself, or if he aided and abetted
6 the commission of the crime by one or more people. I expect
7 him to tell you that it's not necessary for the government to
8 show that the defendant himself physically committed the crime
9 as long as the defendant assisted another person in committing
10 the crime. And here, you know that the defendant and Ito were
11 both helping each other commit this crime.

12 They helped each other by planning the shooting. You
13 know they didn't just happen into 193 territory. They drove
14 there. They drove there with guns. They had a getaway car,
15 that burgundy van, wait nearby. Fellow gang members showed up
16 to watch it happen. This murder plan was a thought-out and
17 coordinated attempt to increase the status of the gang, and the
18 defendant was a part of that.

19 The defendant and Ito also helped each other by both
20 firing their guns that day. Common sense tells you two
21 shooters means double the shots, double the chances of hitting
22 your target. Two shooters also helps protect one another. If
23 the enemies return fire, you can cover your partner, help get
24 away.

25 You heard how the defendant seemed to think it

M5aWpab4 Summation - Mr. Schneider

1 he'd be sitting in front of you and that you'd see all the
2 evidence of his crimes, laid out clearly, piece by piece --
3 evidence like the camera footage or the picture of his pants or
4 the pictures of his hair or his phone that he dropped at the
5 scene -- and that someone would finally hold him accountable,
6 because the defendant is guilty.

7 THE COURT: All right. Thank you, Mr. Hobson.

8 Ladies and gentlemen, it's ten to one. Let's break
9 for lunch. Enjoy your lunch. Be back by two. All right? 2
10 p.m. here in the jury room for 23B. 2 p.m. Enjoy the lunch.
11 When you come back, we'll hear the closing argument of the
12 defense.

13 (Jury not present)

14 THE COURT: 2 p.m., please.

15 Mr. Schneider, how long is the estimate?

16 MR. SCHNEIDER: I don't know, but I hope not longer
17 than Mr. Hobson.

18 THE COURT: All right.

19 MR. SCHNEIDER: That's my plan.

20 THE COURT: 2 p.m. Thank you.

21 (Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

THE COURT: All right. Everyone is here. Bring the jury in.

Do you have a better estimate, Mr. Schneider?

MR. SCHNEIDER: I do not, your Honor. I'm sorry.

THE COURT: All right. I really do want to get the closings in today.

MR. SCHNEIDER: Oh, the closings should be done.

THE COURT: All right.

MR. SCHNEIDER: We're actually hoping to get to the charge, if possible.

THE COURT: I won't be able to do the entire charge.

It's 70-plus pages. But we can get a start on it.

MR. SCHNEIDER: That's the hope.

(Jury present)

THE COURT: Please be seated in the courtroom.

All right. Ladies and gentlemen, you have heard the closing argument, the first closing argument, by the government. We now will hear the closing argument by the defense.

Mr. Schneider.

MR. SCHNEIDER: Thank you, your Honor.

Good afternoon.

Just because he says he's a murderer doesn't make it

so. You need more than just what the government tells you. You need evidence. You need reliable evidence. You need more than just an accusation, and you need more than a fancy PowerPoint presentation. And it's important to understand that after we finish -- after the government spoke, I will speak now, and then the government will speak again, after the judge's charge -- you have a right, an obligation, to demand evidence -- reliable, sufficient evidence.

Now, this was not a complicated case, honestly. It was not particularly long. The facts are not particularly intricate, but it's very difficult. OK? Not complicated, but very difficult. And it's difficult because, as Ms. Macedonio said during her opening, there was a tragic death here. There was a murder of an innocent young man, and two young people were shot as well. So you have to be able to get past the tragedy of the death. You have to get past the fact that there is a murder and racketeering charge. You have to get past every New Yorker's nightmare -- a street shooting where innocent people get shot and killed.

You have to be able to get past the notion that rampant crime in certain neighborhoods some people have to pay. You have to get past the emotional feeling you're going to feel, the sympathy, the gut feeling that you may have when you look over at Christian Pabon. You may say, you know, I think maybe there's something going on there. You have to get past

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that and focus on evidence, because if you look at the evidence and you say to yourself I'm going to follow the judge's instructions when he says the government must prove the case, we think you'll do the right thing here.

Now, during some of his presentation, Mr. Hobson held up a bag of bullets. He held up a gun, and he talked about the evidence in the case. Let's look at what the evidence does and does not help you do, because some of the evidence in the case does not help you address the real issue here. And the only issue is whether or not he is a murderer, whether or not the government can prove that he committed murder on October 2, 2014, or if he aided and abetted somebody else. Did he participate in this enterprise, this illegal enterprise, and the judge will instruct you what it means, and as part of that enterprise, did he participate or help somebody kill a young man?

Now, I have to tell you, I'm concerned. I'm concerned because you have heard significant evidence about how bad this neighborhood was because of some of the guys he was hanging out with. OK? I'm concerned because he was hanging out with the wrong crowd back then. I'm concerned because of his stupid Instagram posts. Not criminal, stupid. OK? Big difference.

I'm concerned about his immature Instagram posts that you have to be able to look past and sift through and decide, is that relevant to the ultimate question of whether or not he

M5aWpab4 Summation - Mr. Schneider

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is guilty of a particularly heinous crime? Because if you can get past those gut feelings that you may have, if you can go past and look and say I don't really feel great about what he was involved with back then, which is not evidence -- it's a feeling; if you can get past that, then I'm confident you can do the right thing here and come back with a verdict that says not guilty.

He is guilty, though. He is guilty of trying to be a tough guy. Not being a tough guy, but trying to be one. He's guilty of being in a car where there was a gun found next to him. So what did he do? He accepted responsibility for that gun in the car. OK? He accepted it by pleading guilty and taking responsibility for what that gun was doing in the car with two other people.

He's guilty of being a gangsta, with an A. All right? Whatever that means in this world now. All right? He's guilty of hanging out with Bloods; with hanging out with SMM, Sex Money Murder; with Trinitarios. In fact, he's guilty of being a Blood. It's not a crime to hang with those people. It's not a crime to be one. It's a crime if you commit a crime in furtherance of those organizations. OK?

OK. So that's what he is -- stupid, immature, hanging out with the wrong people, trying to impress. But what is he not? He's not a murderer. He's not an aider and abettor. He's not a member of this 200 Enterprise. And he's not someone

1 who is really -- really involved in the 200 gang during this
2 murder.

3 Don't take my word for it. I'm just his lawyer. What
4 do I know? OK? You need to look at the evidence and look at
5 the witnesses. No matter what Mr. Hobson says, you cannot --
6 you cannot, you must not -- think you can convict him on the
7 words of these three guys who testified. You must believe
8 Castillo and Lopez and Fedor in order to convict him. No
9 matter how many times the government says no, you have to. Let
10 me tell you why.

11 I want you to think back. How many times during his
12 one and a half hour summation did Mr. Hobson say, well, the
13 evidence is clear, Castillo said this; the evidence is clear,
14 Lefty said that? The evidence is so obvious. He moves the
15 deck. So every time he said those words, that means he is
16 relying on those cooperators, and he is now telling you you
17 have to rely on them. And I suggest to you you don't have to,
18 because without them, the other stuff he talked about, the
19 other stuff he presented on that very impressive, professional
20 PowerPoint presentation does not cut it.

21 That's the issue you have to worry about, whether or
22 not he can -- he meaning not him personally but the government
23 can prove it. You know, how many times did he say Raymito said
24 this, Lefty said that? And think about that.

25 Now, the government -- they did a good job of proving

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1 have ballistics and the autopsy. Believe me when I tell you if
2 there was any chance that the ballistics evidence could connect
3 that man to the crime, you would have heard it. Believe me
4 when I tell you if the medical examiner, who's testified
5 hundreds of times, done thousands of autopsies, if there was
6 anything scientifically that they could prove from that autopsy
7 to connect that man to the crime, you would have heard about
8 it. Nothing.

9 In fact, I suggest to you that the ballistics and the
10 medical examiner not only does it not corroborate the
11 cooperators, in fact, it contradicts the cooperators, because
12 the cooperators told you about certain statements that they say
13 were made by people, saying whose bullet killed. Well, we'll
14 talk about that in a minute.

15 What does the government not have? What did they not
16 present to you that I would think as a juror you would want?

17 Well, there's no fingerprints that were recovered; no
18 cell-site information, where they tell you where a phone call
19 was made or certain area; no phone records to show calls
20 between people, either right before or right after the murder,
21 to show a connection. OK? There's no ballistics, again, that
22 connects him to a particular gun or a particular crime. And
23 significantly, there is no DNA.

24 Blood, sweat, saliva, skin cells, any one of those can
25 present DNA and can be evaluated. And if it's there, it can

1 beyond any shadow of a doubt that there were two guns used --
2 again, held up that ballistics evidence; that ballistics expert
3 testified. They proved without any shadow of a doubt three
4 people were shot. Washington Heights is a dangerous place ;
5 that a van was used. And they proved beyond all shadow of a
6 doubt that Milton Chardon is a tattooed guy all full of gang
7 stuff. And they proved without any shadow of a doubt that
8 Marcos Espinal, Ito, was guilty. He pled guilty to this crime
9 in state court, back years ago, after he was arrested just a
10 few days after the murder, when his father's van was
11 confiscated, when DNA connecting Marcos Espinal to the van and
12 the crime was involved. So Marcos Espinal took responsibility.

13 That's what he's guilty of.

14 So let's see. Without the cooperators -- again,
15 putting them aside for a moment, let's see what the government
16 did, what they had, what they presented to you. They presented
17 911 calls, right? Remember that in the very beginning? It
18 corroborated a lot -- that a shooting happened. OK. No one
19 disputes that. They corroborated the fact that people were
20 screaming. There were a number of shootings. It didn't help
21 one second, not one bit to tell you whether or not he was
22 involved in that, did it?

23 They showed you maps. They showed you photographs.
24 They had Instagram posts with texts and photos and videos .
25 They had phones recovered. They had video for the date. They

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1 then show that guy was at a certain location at a certain time
2 and either touched something or didn't touch something. OK?

3 Not one civilian witness testified here; not one
4 victim. There were three victims. One passed and two lived.
5 Two are stable. Nobody testified here, to come in and say I
6 saw that guy that night or I saw him the day before, the day
7 after, anything like that.

8 Property that was recovered from the van that was sent
9 to the lab, nothing in any way connecting that man, Christian,
10 to this crime. Not one piece of DNA of his was found anywhere.

11 Now, it's law enforcement's choice to try to get DNA,
12 to swab a location, to try to get it from him after he was in
13 custody, to try to get it any other way if they had to. So if
14 they choose not to do it, you have a right -- in fact, I
15 suggest that you have an obligation to say to yourselves they
16 should have, they didn't, and that helps me as a juror to
17 decide that there's insufficient evidence here. OK?

18 There's no fingerprints of his anywhere. Now, I
19 suggest if that phone that was recovered was his, you would
20 test that for fingerprints, wouldn't you? Test it for DNA,
21 wouldn't you, the phone that was recovered at the scene?

22 More important, how about the van? He was supposedly
23 in that van. Don't you think he touched the door? Don't you
24 think he touched going in, coming out, anything like that?

25 I specifically asked Det. Gill, by the way, when he

1 looked at the video, did any of those young people look like
2 they were wearing glove? The answer was no. And you've seen
3 the video. Nobody's wearing gloves. And just today, the
4 government showed you 912M, which is a still from the video.
5 And they had it stopped, and they showed the guy who they say,
6 with the camouflage pants and hoodie, they say is Christian
7 Pabon, the guy with the gun. If you look at 912M, you can see
8 as that person is running, as that person is running away and
9 going with the gun in his hand, you see him stop and touch a
10 car, as he's going in between the two cars, a flat hand. That
11 flat hand was perfect if you had checked for fingerprints or
12 DNA.

13 It's in their witness's, their exhibit that they put
14 before you. There's been no testimony at all that any witness
15 ever identified a photograph of him. There's no testimony
16 anywhere that any cooperator was ever shown, any victim was
17 ever shown a photograph of him. There's no testimony that a
18 witness or a victim ever identified him by name, by clothes, by
19 description, by nickname. Nothing at all.

20 Now, the motive for the murder had been put before you
21 by the government early on. First, remember, Det. Gill, when
22 he was investigating the case, he was investigating it as a
23 street crime shooting. This was back in 2014. And at that
24 time he had no idea what the motive was. He didn't speak to
25 anybody enough to get a motive.

1 you can, you must, you have an obligation to look at evidence
2 and lack of evidence. You have a right to look at what's
3 presented and what's not presented. Not required, and the
4 government is not on trial for it, but you can say to yourself,
5 OK, what makes sense here? Let's talk about common sense. If
6 I was investigating, this would be the thing I would want to be
7 done because this could prove whether he is the guy who did the
8 crime.

9 (Continued on next page)

1 But later on, OK, as these cooperators came forward
2 and as the cooperators testified, it got really interesting,
3 because Castillo testified that the beef was about, that this
4 retaliation was because Milton got jumped. OK? Except I found
5 it very interesting that the government, on their direct
6 examination, did not ask Lefty, did not ask P-Mula about the
7 motive. OK? Didn't ask them about the motive. Why? I tell
8 you why. Because on cross-examination, Ms. Macedonio asked
9 about what the motive was, and Lefty said he was there at the
10 scene of the dispute. He had a gun. The motive was over Moe's
11 girl.

12 Now, Milton getting jumped and Moe's girl are two
13 very, very different motives. OK? But I think you should ask
14 yourselves why didn't the government ask their own witness --
15 witnesses -- on direct examination about those ideas or the
16 motives or the inconsistency that arose between that testimony
17 that they knew about, or should have known about.

18 Now, I want to be very clear here. I'm talking to you
19 about things that have been missing, things that are not here.
20 The government, these prosecutors and the government as a
21 whole, they're not on trial. OK? Det. Gill is not on trial.
22 Law enforcement is not on trial.

23 The judge, either later today or tomorrow, is going to
24 tell you that law enforcement is not on trial. Specific law,
25 investigative techniques are not to be considered by you. But

1 MR. SCHNEIDER: Now, the government, they have an
2 absolute right to prove their case however they want. They do
3 not have to use any special thing that I say or even what you
4 say, okay? But they do have a burden of proof. They do have
5 to prove it. And they have the power, they have the right,
6 they have the power to get reliable evidence, to get sufficient
7 evidence, to get evidence that shows that it is not just some
8 liar's word, but evidence to show what is indisputable, okay?
9 You can consider what's missing, DNA, fingerprints, phone
10 records, civilian witnesses. You can consider that.

11 Now, Prettiest Gangsta. Pretty Boy Banga. Not my
12 particular taste, okay. I have to say, I'm old school, okay.
13 My parents used to like jazz. I like Motown. Some guys like
14 rap now. Some guys like gangster rap. Who knows what it is.
15 But the fact is, talking crap on videos is not a crime. Okay?
16 It may be stupid. It may be immature. All it is is a bunch of
17 young men looking tough, acting tough, gangster rap, whatever
18 that may mean. Some guys are making millions of dollars off of
19 that particular type of music.

20 Pretty Boy. That's a matter of opinion, I guess,
21 right? But you consider that. Who knows what is it? He is
22 just showing off, just trying to get attention, trying to
23 attract some attention, whether it is to get respect on video,
24 to get a lot of followers, to get Instagram to say, whoa, look
25 at that guy, that's kind of cool, or that's kind of stupid,

1 either way, but it's just trying to cry out for attention.
2 Okay?
3 How crazy is it to have a razor blade in your mouth?
4 Are you kidding? Okay? Not a crime, but it's felony
5 stupidity. Okay? Let's be clear about that. But also, to be
6 very clear that the witness, one of the witnesses who talked
7 about seeing that razor in the mouth also said he has never
8 seen that guy use it. He has never seen Christian cut anybody.
9 He has never seen Christian slice anybody. Okay? That is
10 critical. Because, again, he is showing off to the world on
11 Instagram, but in real life when it comes down to committing
12 crimes, you are not doing it at all.
13 All of these Instagram posts, all of these videos you
14 see, he is a big shot, right? He is with his guns with his
15 fingers. These are his guns. You don't see any real gun. You
16 don't see any reference to a real gun. You see a guy pointing
17 their fingers like my kids did when they were five years old.
18 You don't see him bragging about a murder. Okay? You don't
19 see him bragging about crimes he committed.
20 And in fact, if you remember, the video that the
21 government showed you, 328A and B, they talk about it's a whole
22 lot of gang shit, right? I think that's what was going on,
23 that was during the government's summation. It was
24 interesting, he showed you the video. He read the "whole lot
25 of gang shit," but this is the one time he didn't read what the

1 so-and-so 200, yes, but it is not Blood, it is not Trinitarios,
2 it is not the Hot Boys, it is not Sex Money Murder. And how
3 weird is it that everybody who testified, they know they can't
4 get around it, these cooperators, because they know that
5 everybody is not a member of this organization, this
6 enterprise, this gang. They say, well, yeah, he is a Blood,
7 but he also hangs out with 200. Oh, yeah, I'm Trinitario, but
8 I do crimes with 200. Oh, I'm a Trini, I was, I'm not now, but
9 now I'm doing stuff with 200. Okay. Louie Fedor, Trinitarios;
10 Lopez, Trinitarios, not 200; Yasmil, not 200. It just doesn't
11 make sense. It shouldn't make sense to you that guys are
12 committing crimes when they are gang members here. These are
13 my buddies, but I'm committing crimes with other supposed
14 gangs. That is not an association.
15 Now, what is an associate? Do you think in your life
16 someone like Castillo, Fedor, or Lopez, do you think those guys
17 ever used the word "associate" in their lives before they came
18 into a courtroom? For one second, can you picture them hanging
19 out on Dyckman, on Nagle, talking about, oh, yeah, that's my
20 associate, oh, yeah, I'm an associate of him. Okay? That was
21 something that they have developed during their trial
22 preparation with the government. It's not illegal, not
23 improper. The government can talk to their witnesses. The
24 government can prepare them. But I tell you, think about it.
25 So you have an associate, right? So I think I asked one of

1 hashtag was. It was #SMM, #BD. #Sex Money Murder, #Blood, not
2 200, not 2hunnit, as he tried to say, nothing like that. And
3 that's because he can't be doing that stuff, because it's not
4 part of 200.
5 Now, 200 and Dyckman uptown, Washington Heights, okay?
6 It's a neighborhood. It's just like -- look. I grew up in the
7 Bronx. If I do #TheBronx, is the Bronx now a gang? So let's
8 keep perspective on what gangs are, what enterprises are, and
9 what guys are who hang out in the neighborhood, guys who went
10 to school together, guys who grew up together, guys who hang
11 out.
12 Tattoos is kind of a big thing in the gang world,
13 right? And as you can see also, you know, you have seen on
14 some of the pictures that Christian has tattoos and Milton
15 Chardon, my goodness sake, you saw the tattoos he has, right?
16 There is not one tattoo in evidence about Christian Pabon
17 having -- no testimony about Christian Pabon having a 200
18 tattoo. The government must have shown you half dozen times
19 about Chardon's tattoos, the guy holding the jail bars and Free
20 Ito, something like that, right? There is no Ito tattoo in
21 evidence related to Christian Pabon.
22 You heard a lot about Trinitarios, about Bloods, about
23 SMM. Now, I have to say, this is -- I would suggest to you
24 that this 200 enterprise is a made-up, fictitious gang. 200
25 exists. You saw all the names, saw all the people said

1 them, as an associate, does that mean you try to get into a
2 gang and they said no? No. As an associate, does it mean they
3 asked you and you said no? No.
4 So an associate, as far as the government is
5 concerned, is anybody who is not a gang member. All of a
6 sudden you become an associate. And if you are an associate,
7 then that means you can then be part of the enterprise. If
8 anybody can be an associate, it just seems to me that that
9 person is no longer part of the enterprise.
10 They talked about how these guys, when they were in
11 jail, talked about starting a gang, going to take over the
12 block, we are going to protect it, it is going to be our
13 territory when we get out. Remember the name Frankie was used?
14 I asked somebody about Frankie, and it turns out Frankie was
15 the boss. He was the boss of that spot in that neighborhood,
16 in that area before, during, and after anybody named 200 ever
17 came around. Before Milton, before Ito, before anybody,
18 Frankie was there. So if Frankie is not a member, if Frankie
19 is not an associate, if Frankie is, quote, the boss, how can it
20 be that 200 supposedly said we are going to kick other people
21 out, we are going to protect the neighborhood, anybody who has
22 a beef with us, we are going to use guns, force, violence, but
23 Frankie is right there in the middle doing his crap, selling
24 his stuff?
25 Now, there is nothing about the 200s, no matter how

many times Mr. Hobson put a list of things on that PowerPoint to show that it was an enterprise, I'm suggesting to you that it really was not. There was no oath, there was no real hierarchy, there were no cards used, there's no beads, no clothes, no rituals, no meetings, no dues, no initiation, nothing. Nothing to make that anything other than a bunch of guys hanging out in that neighborhood.

The fact that they named the cooperators and then again Mr. Hobson talk about the headquarters. Headquarters? What did they show you? They showed you the outside of a building. They showed you 5420, guys outside a building one time, taking stupid pictures.

To me, what's a headquarters of an enterprise of a gang? Well, maybe there is an apartment. You hide your drugs there. You hide your guns there. You stash your money there. You have meetings there. You have people who are called to the carpet because they did something wrong, so they have to show, wait a second, you have to prove you are still a good guy. That's what headquarters are.

They showed you nothing. They just talked about headquarters. And by the way, the headquarters, according to Fedor, are Academy and Post or Sherman and Arden or 5420 was the nickname. According to Castillo it was Academy and Nagle, Sherman and Sickles, Arden and Sherman. So they had a lot of headquarters, a lot of little subdivisions of these

we all kind of got immune to it. How often the government said to a witness: Did you ever commit crimes with 200? Did you ever commit a crime with 200? Or with a 200? Or with members of 200? Well, you know what, 200 is not a person. 200 doesn't commit crimes. People commit crimes. They have to prove not that these cooperators did crimes with 200 but that they did a crime with this guy or he knew about it or he participated. They just can't say 200 and you forget that there is somebody specifically sitting there who is on trial.

Lefty, P-Mula, Raymito did not give him one penny for any crime they committed without him. They did not give him one penny to show any sharing, any commingling of funds. They didn't give him one cent for anything that they allegedly did.

The gang never divided any of the spoils.

Every single time one of their cooperators testified about an admission that was made, whether it was Milton Chardon's admission, whether it was supposedly Christian Pabon's admission to them or statement from Christian to Milton and from Milton to somebody else, there was nobody else present. There was no one else who confirm or corroborate what was said at that point. Isn't it very interesting how these cooperators insulated themselves from contradiction? They protected themselves from making sure that whatever they said is okay because no one can test, no one can see, wait a second, I said this, but you said that, there is something wrong with

headquarters here where these guys supposedly hung out and did their crimes.

It also makes no sense in the world of crime that somebody who is a gang member here will commit crimes with other gang members and then for the government to think, hey, wait a second, that's really only just one global enterprise. When someone commits a crime with a non-gang member that seems to me that if that gang is running the place, they would need to get permission, they would get some rent, they would be able to share in the proceeds, they would be able to decide who gets what money from what crime. There is none of that.

Now, one person put up money for commissary or bail or lawyers. There is no pot. There is no till. There is no fund that is used for anybody. According to the government, according to their witnesses, if Ito was in jail and if this guy, Christian Pabon, had done it with Ito and if Ito is taking the blame for this crime, you would think that he would do anything to keep Ito quiet. You would think he, Christian, would put money in the commissary all day, all night, he would write him letters, make sure he is calm, make sure he is quiet, make sure he doesn't flip on me because. I want to make sure he is happy because he is taking the blame for something that I supposedly did.

You know, it was interesting, during the trial I know you didn't pay much attention to the concept of this, because

that.

Now, you heard some of the witnesses testify about how people out on the street occasionally take responsibility for things that they didn't do and also sometimes because they want to make it sound better, they want to enhance their own place out there, but this I suggest to you is a little unusual. According to Lefty, Moe told Lefty that Moe was part of it and that Necio and Banga, supposedly Christian Pabon, were talking about it. Right? They said the van was burned up. You saw the video. You heard the testimony. Was there any van that was burned up? And just so there was no confusion, Ms. Macedonio clarified when she asked them, well, are you specifically talking about the van that was supposedly used in the murder on 193rd Street? Answer: Yes.

So the witness told you that somebody told that witness that the van that was used in this murder had been burned up. You know that's not true, right? Either that or the video is wrong, which I don't think anybody is going to suggest. And they didn't just say that the -- by the way, that was, I think, at page 844, if anybody is interested, if they want to check that out to make sure that I am saying it right, page 844, right, where they said that the van had been burned up.

They also said that they shot in the middle of the street and that there was a bus there and they did that so they

1 wouldn't be caught on camera. Well, you know that didn't
2 happen, right? Because they are on camera. But there was no
3 bus there. It was not in the middle of the street. You saw
4 what happened. According to the video, those guys ran up to
5 the corner and were on the sidewalk shooting. So the van being
6 burned up, the bus being there, shot in the street, all lies or
7 just outright wrong.

8 Now, also Moe supposedly told P-Mula that Ito was in
9 jail for the murder he did not commit and Ito is fighting the
10 case, and if he goes to trial and wins we are all going to get
11 indicted. And Milton said that Christian did the murder.
12 Okay. Well, we know that's wrong because, number one, Ito did
13 get involved. Ito was involved. Ito did shoot. In fact, Ito
14 pled guilty to it, number one. Number two, they got indicted
15 after Ito pled guilty. And number three, they can't possibly
16 know who killed that young man. One of the two did, be very
17 clear about that, right, but somebody cannot possibly say
18 scientifically my bullet shot and killed that person. That
19 person's bullet did not shoot and kill. How do we know it,
20 they can't say that? Because the scientists can't say it. The
21 ballistics expert can't say it. The medical examiner can't say
22 it. So if they can't say it, how in God's name can somebody on
23 Dyckman Street say that at that point?

24 Call me crazy. Can you recognize somebody if they cut
25 off their hair? Does that change your ability to see their

1 So if they were looking for him, they certainly could have
2 arrested him right then. If they knew, whoa, whoa, I see the
3 picture here. There it is. That's the burglary guy, that's
4 Christian Pabon. Wait a second. Let me put his name in a
5 system, in a computer. It comes up. He is in Rikers. He is
6 in jail. He is here. He is there. Let's go get him. So
7 let's be very clear that is complete nonsense that any witness
8 said that at all.

9 Now, let's also remember why in God's name would this
10 guy ever confide in Lefty? Lefty did not even know his name.
11 Lefty could not, on examination, on the testimony here on the
12 witness stand, could not tell you Christian Pabon's real name.

13 It's also kind of interesting because Raymito and
14 P-Mula also said that they never spoke directly to Christian
15 Pabon about the murder. Well, if the government is so hyped on
16 its theory that he is bragging, that he wants to enhance --
17 puff his chest, enhance his reputation, wouldn't he be speaking
18 directly to P-Mula? Wouldn't he been speaking directly to
19 Raymito and talking about the murder that he supposedly did?

20 Also it is kind of inconsistent. On the one hand,
21 they say he is bragging to build himself up and on the other,
22 he is laying low, he is cutting his hair, he is leaving, not
23 around the area. But yet at some point you heard that he told
24 Raymito, Ito's holding it down, but we don't want to talk about
25 it.

1 face and say, oh, yeah, that's the guy who was involved in the
2 murder. The fact that the government spent so much time and
3 effort and photographs on hair, what does hair look like
4 before, what does hair look like during, what does hair look
5 like after, the fact that he cut it. That is, I think, kind of
6 like trying to shift your attention away from the real issues,
7 it seems to me.

8 And he supposedly cut his hair and laying low at the
9 same time that he is bragging to all these people about the
10 crimes he is doing? Right? So on the one hand you don't brag
11 about a crime, on the other hand say, hey, don't talk to me
12 about the crime, you don't cut your hair. It just doesn't seem
13 to make sense.

14 He supposedly told, according to Lopez, Milton told
15 him that Christian cut his hair because of some picture
16 floating around with a Burberry shirt and therefore -- and then
17 Christian knew they were looking for him. Well, there is no
18 evidence anywhere in this entire record from Detective Gill or
19 anybody else that anybody was ever looking for that guy for
20 this murder. There is no evidence anywhere ever that that
21 photograph, that that burglary photograph, which the government
22 did show you, it is in evidence, that that Burberry evidence
23 was ever in the hands of the police and that they were looking
24 for him. If they were looking for him, they had him. You know
25 why? Because he was in jail. He was in jail in 2016 and '17.

1 Is he bragging or is he holding it down, not talking
2 about it? Is he puffing or is he somehow trying to lay low?
3 You can't have it both ways.

4 Also, let's remember something. Lefty and Raymito
5 were in jail August of 2017. After they kidnapped that guy,
6 they were in jail August of 2017 up until yesterday. He, and
7 you will hear -- "he" meaning Christian, was in jail from July
8 19 of 2016 up to March 24 of 2017. So that means he was only
9 on the street with these guys for four months or so, give or
10 take. What kind of confidence would he have with these guys?
11 What kind of level of security would he feel with these guys if
12 they are only out on the street for a few months?

13 Now, this video that Mr. Hobson focused on and as well
14 you should focus on it, only shows that a shooting happened.
15 That's it. It does not tell you that Christian Pabon did it.
16 No matter how many times Mr. Hobson said that's him, that's his
17 jaw bone, that's his forehead, that's his this, it's up to you
18 to decide, and I suggest to you when you look at that, you
19 cannot tell who that is. You cannot say beyond a reasonable
20 doubt that the person in that video with the camouflage pants
21 is Christian Pabon.

22 But, you know, you would think that the government, in
23 their preparation, would have shown that video to their
24 cooperators and would have had the cooperators get on the
25 witness stand and say, oh, yeah, I saw the video. I know

Christian. That guy there, that's Christian. They didn't do that. They didn't show the cooperators, any one of them, at least they didn't testify about it. You don't have any civilian witness who may have been there, any victim or any witness showing the video and saying do you recognize anybody, you know? I know it was a stressful time back then, but let me show you the video. Let's slow it down. Let's take your time. Can you see that video? Do you see anybody who did that? Do you recognize that person? None of that was there.

No matter how often Mr. Hobson says that's him, no matter how serious Mr. Hobson says it, the kind of tone of voice, the kind of attitude, the sincerity that he may believe it, doesn't mean you have to accept it, doesn't mean you have to believe it. All that video shows is two people shooting. And it directly contradicts what the cooperator said, and we spoke about that earlier, that nobody could possibly know which bullet hit, which bullet didn't hit.

I guess I'm a little confused at the government's theory where they were showing -- where they looked at the video, they talked about these camouflage pants. Now, if you believe that Christian Pabon did it and if you want to believe that he was trying to lay low because he supposedly cut his hair to lay low, then wouldn't he have burned those very unique camouflage pants? I don't know how unique they are, by the way, but let's get past that. Wouldn't he have gotten rid of

Who says anyone dropped it? Who says when it was dropped? Okay? The only connection from that phone to this particular person is from the van, right? The van phone has the contents which says Banga. Well -- and therefore the government's theory could be that the phone in the van which had the name for Banga is Ito's phone, except the problem with that is that Ito's own number is in that phone. Why is Ito -- by the way, there are two numbers for Ito, Ito and Ito 200.

Now, if it is someone else's phone besides Ito, all those guys names are on the list. P-Mula, he is on the van phone four times. Lefty, he is on -- he is in the van phone one time. The van phone contents has P-Mula four times, Lefty, Ito, Ito 200. You know what else is in the van phone? Banga. That's what the government focused on. Banga with that phone number, and they highlighted it in their chart. But you know what they didn't tell you? There is another name Primo Banga. There is another name Lou Banga Post. So who is to say which is the phone that belongs to Mr. Christian Pabon?

I beg of you, okay, in the Government Exhibit 101, Government Exhibit 102, you look at those contact lists, you are going to see the name Banga, Primo Banga is on page 6 ten lines from the bottom, Lou Banga Post page 1 six from the bottom. So you are going to see those names in that van phone. Okay?

So how can you be so sure? There are no phone records

those pants? But the government showed you from a couple of months afterward that he still had them. If he was so concerned because he was guilty of making sure that no one caught him wouldn't he have not posted a picture with the same pant he was wearing at the crime? Wouldn't he have been more circumspect about that?

They also showed a picture of him two weeks after the murder. Wouldn't he have cut his hair right after the murder if he is worried about getting caught, worried about being on video, worried about somebody identifying him? Boom. You go to the barber the next day, cut it off. You not only wait, but you post pictures of yourself in the same pants, with the same hair, and then say, oh, you know what, it's been a few weeks, maybe it's time to cut my hair? It just doesn't really make sense.

Mr. Sykes is the young man who testified toward the end, the one who prepared the phone charts. All that chart does is basically agree with everything that we have said all along; that these guys from the neighborhood know one another; that these guys from the neighborhood have each other's names in phones.

Now, the phone at the scene. Wow. Sounds pretty impressive, right? Sounds pretty damning. And the government's position is that that phone belonged to him and he dropped it during a murder. Well, who says it's his phone?

saying that that phone belongs to Christian Pabon. There is no subscriber information. There are no cell site records. There are no calls between people and that phone. There are no fingerprints on that phone. You saw what it looks like, right? Easy enough to print from that. There is no DNA.

There is no one who says, oh, yeah, oh, yeah, I have called Christian to commit robberies with him. That's his number. Oh, yeah, I have spoken to Christian when we would go breaking. That's his number. That's because they didn't do those robberies. They didn't break. They didn't have his number. "They," I'm talking about Raymito, Lefty, and P-Mula. There is no witness here who says, oh, yeah, here, by the way, I'm a cooperator, here, take my phone, look in my phone, see if you can find Christian Pabon's phone number. There is none of that.

There is no witness who says -- who says if he is out there confessing to everybody, by the way, don't you think he would say, God damn it, I dropped my own. Oh my god, I left my phone at the scene of a murder. With all that other stuff, don't you think he would be talking about that if it was his phone, if he did it? So I suggest to you that that is a real problem. If it is his phone, the phone at the scene, it is interesting, P-Mula's name is not in there. Lefty's name is not in there. Raymito's name is not in there. Ito's name is not in there. Yet, in a comparison chart that Mr. Sykes

1 prepared, which is Government Exhibit 801. This makes no
2 sense. There is the same phone from the van, Ito, scene phone
3 name Milton, they have the same number. All of a sudden Ito
4 and Milton are the same people? All of a sudden Ito and Milton
5 are sharing the same phone? All of a sudden Ito and Milton,
6 maybe who knows, maybe they are different people. Could it be
7 there is more than one person named Ito? Could it be there is
8 more than one person named Milton? Could it be that there is
9 more than one person name Banga? Oh, yes, there is—Primo Banga
10 and Lou Banga Post. So let's be very not so quick to jump to
11 the speculation, to jump to conclusions about the fact that
12 that is the way that that phone must be his, because there are
13 other ways that they could have proven it and they didn't and
14 it is insufficient evidence, the stuff that's missing here, the
15 stuff that you have a right to demand.

16 Now, you heard some testimony, actually it's a
17 stipulation, about the gun that Mr. Pabon had in a car. Now, I
18 guess you should ask yourself why was that gun introduced at
19 this trial? What's the relevance of that gun at this trial?
20 We know for a fact it is not the same gun because there is no
21 ballistics testimony to match that gun to the murder. We know
22 for a fact that that witness wasn't shown to -- that that gun,
23 sorry, wasn't shown to a witness, that gun wasn't shown to a
24 cooperator and said, by the way, is this the gun you saw
25 Christian with on a certain date? But we do know that that gun

1 business record from the Department of Corrections, which says
2 that Christian Pabon was in jail from July 19, 2016, to March
3 24, 2017.

4 Now, I see you are asking yourself why would a defense
5 lawyer ever introduce to a jury the fact that his client was in
6 jail? What's the point? I'm glad you asked because I'm about
7 to tell you. The point is, that proves beyond any shadow of a
8 doubt that Castillo and Lopez are not just liars in general,
9 but they are liars specifically about him and committing crimes
10 with him. They lied specifically about not just his name, but
11 what they say he did with them.

12 And Mr. Hobson talks about two robberies or two
13 attempted robberies, and I'm going to call one of them the
14 set-up date where Raymito had his girlfriend set up a date to
15 meet a guy. Right? That's one robbery. And Raymito talked
16 about that. He supposedly did it and he did it with Lopez, a
17 girl, the girlfriend, right, and this is where they try to get
18 the Rolex and the chain from Hunts Point, whatever, whatever.
19 The details don't really matter all that much, but what matters
20 is Castillo was clear on direct examination, not on cross when
21 he is trying to be tricked, not on cross when they are trying
22 to make him look like a liar, but on direct examination, he
23 said that crime happened between November of 2016 and January
24 2017.

25 That's impossible. Well, I take it back. The crime

1 was in the rear of a car where Christian was seated and that
2 car would be driven by somebody else, someone else is driving,
3 somebody else in the front passenger seat, okay. There is no
4 connection, zero between that car and anybody in 200 or that
5 murder. There is no connection between the driver and 200.
6 There is no connection between the passenger and 200. There is
7 no connection between anybody in that car, with that car, about
8 that car, and anything to do with 200 or the murder.

9 Christian accepted responsibility for that crime.
10 Okay? He pled guilty to not possession, but to attempted
11 possession of a weapon in the third degree. But you know
12 what's really important, that the government held that gun up,
13 but there is not one piece of evidence, not one testimony, not
14 one piece of scientific evidence to show that that gun was ever
15 used ever. There is nothing to say that it was ever shot, that
16 it was ever used in a crime, that it was not just possessed,
17 anything illegally, other than in that car at that time.

18 You know, speaking of gun, other than this unrelated
19 gun that the government showed you and spoke about, the photos,
20 is there any other evidence that Christian Pabon had a gun
21 other than coming from cooperators? Photographs of him with a
22 gun? No. His fingers. Videos of him, a gun? No. His
23 fingers. Instagram, a gun? No. His fingers.

24 We will introduce -- it's already been introduced in
25 evidence Defendant's Exhibit E. Defendant's Exhibit E is a

1 could have happened, but it's impossible that Christian Pabon
2 was involved. So we have now just given you the defendant's
3 best alibi, best ever. He is in jail. He is in custody of law
4 enforcement at the time that these two guys -- one guy didn't
5 just say it, by the way. Castillo didn't just stay. Lopez
6 said it also. And both of them said he was there. So the
7 government says, ah-ha, that means they are consistent, ah-ha,
8 that means they are telling the truth. Well, no, it just means
9 they are both lying. They are both consistently lying because,
10 you know -- well, let me give you one other one.

11 Then Castillo also talked about this party promoter,
12 right? Supposedly not Lopez, just Castillo and Christian
13 supposedly followed some guy from Queens to Long Island and
14 they lost him in traffic, right? He was very clear, Castillo.
15 He said that happened between -- around January of 2017 before
16 March. Okay? Do you hear what I am saying to you? That
17 Castillo swore under oath that he committed a crime with that
18 guy when that guy was in jail. Okay? That has to mean
19 something in terms of evaluating Castillo's credibility.

20 Please do not accept from the government -- because
21 I'm telling you they are going to get up. They are going to
22 answer. Do not accept an argument that, well, the dates are
23 just approximate. It doesn't really matter, what matters is
24 that the crime happened, it doesn't really matter when it
25 happened. Okay?

1 You know what, that's not really fair, because
 2 Castillo had the choice. He could have not answered. He could
 3 have said "I don't remember." He could have said "I don't know
 4 the date." But he didn't. He chose to answer. And more
 5 importantly, he answered it on direct examination from them,
 6 from the government, not from us. So please don't just sit
 7 back and say, okay, well, dates don't matter, dates are
 8 approximate. Okay, dates could be approximate, but this is
 9 something that you know for a fact that guy was in jail at the
 10 time when it happened.

11 Now, I want to talk about cooperators for a little
 12 bit. You know, when I raised my two children, my two boys, I
 13 tried to teach them to play nice, right? I tried to teach them
 14 to do the right thing, cooperate with each other. Cooperate
 15 with your friends. Play nice because being a cooperator is a
 16 nice thing. It's like kind of a mushy kind of feeling, right?
 17 No. Cooperator is something that the government has now given
 18 a name to informants, to rats, to snitches, to turncoats.
 19 These are people who have --

20 MR. HOBSON: Objection.

21 THE COURT: All right. Sustained.

22 Ladies and gentlemen -- I take it, sir, that you are
 23 not calling them those names --

24 MR. SCHNEIDER: I would never.

25 THE COURT: -- the witnesses those names, is that

1 correct?

2 MR. SCHNEIDER: That is correct, your Honor.

3 THE COURT: Ladies and gentlemen, that is just
 4 somebody else's characterization apparently. Is that correct,
 5 Mr. Schneider?

6 MR. SCHNEIDER: Yes, sir. That is correct.

7 THE COURT: All right.

8 MR. SCHNEIDER: The government would obviously prefer
 9 to have priests and imams and rabbis and nuns to be their
 10 witnesses, but these guys are charged, these guys are involved.
 11 So in general, these three guys to say that they were lying to
 12 you would be an understatement.

13 By the way, let's remember, all three of these
 14 cooperators were not present for the murder. All three of them
 15 were in jail at the time. Okay? They -- these guys, when
 16 Mr. Hobson talked about terrorizing neighborhoods, talked about
 17 how dangerous it is, and how important certain people are, is
 18 he remembering what his own -- not his personally, what the
 19 government's own witnesses said about what they did out in the
 20 world? These gentlemen, in my humble opinion, and I suggest
 21 when you evaluate them, have no conscience, they have no
 22 morality, they have no sense of right and wrong. All they have
 23 is what can I do for me? How can I help myself? How can I get
 24 out of trouble? How can I avoid doing what I am supposed to
 25 do?

1 Now, one of the problems is that when you hear about
 2 80 robberies or a hundred breakings or home invasions time and
 3 time again in a very even tone, I'm afraid that you become
 4 desensitized to that. I'm afraid that you get immune to what
 5 it means. Think about what these guys said. Think about how
 6 it didn't phase them for one second, how they spoke about
 7 burning people's faces with irons and bodies and tasings and
 8 shooting and God knows what else, throwing guys out of cars at
 9 60 miles an hour on the Major Deegan. They said it as if they
 10 were ordering lunch. They said it and it didn't matter one
 11 second at all.

12 Now, how many times, if you are a regular person using
 13 common sense, and if someone comes to you and tells you a story
 14 but you have heard that they have lied, they have lied, they
 15 have lied, they have lied, how many times must somebody say I
 16 have lied so often that they are no longer believable? How
 17 many times does it take?

18 These people who testified are incapable of the truth.
 19 They will do whatever they have to, say whatever they have to
 20 They will think how can I get out, how can I help? They have
 21 lied to anybody who would talk to them. If they are involved
 22 in a situation, they have lied. Arresting officers, probation
 23 officers, parole officers, judges, when they have promised to
 24 come back and they don't come back. Not only don't they come
 25 back, they promise to come back, they don't come back, and they

1 go out and they commit more crimes.

2 They have lied to these prosecutors sitting at this
 3 table. They have lied to the prosecutors before these
 4 prosecutors. They have lied under oath. It is easy for the
 5 government to say, well, lying on the street is one thing, but
 6 coming into court, putting your hand on the Bible, swearing to
 7 tell the truth, that means something. Okay, they lied under
 8 oath at different times, at depositions, whether they took
 9 guilty pleas, whatever it was. They did whatever they had to
 10 do to get out and get out from under.

11 Now, Castillo, his cooperation agreement is in
 12 evidence. I'm not going to go into it with you, the details,
 13 but let's just say he is facing life. He could have gotten
 14 less, you know, mandatory minimum, I don't know, 20 or 30, I
 15 forget to tell you the truth, but if you think about, and I
 16 will not—we don't have enough time—go into all of the crimes he
 17 committed, but he was involved in breaking all over the
 18 country, robberies, burglaries, kidnappings, pimping,
 19 kidnapping, throwing a guy out of a car, pistol-whipping,
 20 drowning people to try to get them to talk, using a hot iron.
 21 When did that become the new thing of home invaders, using a
 22 hot iron? How do people know to do that? Where did that come
 23 from? Who thinks about that, to use a hot iron to make
 24 somebody talk to you? Well, that's what they did, and that's
 25 what Castillo was involved in.

1 So I honestly don't want to go into all of the crimes
2 he committed, because we will be here until next Thursday, but
3 let's just say that think about him out on the street.
4 Mr. Hobson is worried about Mr. Pabon, and him terrorizing and
5 the 200s terrorizing? Think about Raymond Castillo getting out
6 and walking the streets any time soon.

7 Lopez, P-Mula, I think the phrase he used was that he
8 became federal property, right? And I asked him, I said, you
9 consider yourself a truthful person? He said the audacity to
10 say yes. Then he then told everybody how many people he lied
11 to. And also all of the assaults, the shootings, the home
12 invasions, this guy Epps who not only did he tie Epps up, they
13 hog-tied him and tied his mother up, not once, but twice. But
14 you know what? He also said he always carried a gun. The
15 crimes. Imagine him walking the street. Imagine him out
16 there. You meet him. You see what's going on. You bump into
17 him. What's going to happen to you at that point ?

18 So more importantly, the crimes he committed in jail,
19 he didn't care what he did or who he did it with, and no matter
20 how many times he was told not to do certain things by the
21 government, he did them anyway because he thought he can get
22 away with it. And I think the key is, remember what he said on
23 his -- the tattoo, tattoo he has on his neck. "Trust No One."

24 Now, Lefty, he is also beyond description in the level
25 of violence he has involved himself in when he was a kid up

1 until who knows when. He has always had a gun, never been
2 afraid to use it, kidnappings, robberies, arson. He burned a
3 chicken coop because he was bored, okay? He tried to burn a
4 super's basement because of the dog. He's tried -- he was
5 shooting at police officers with marbles. He was dropping 40
6 ounces on a police car. He will do any single thing. He
7 tased -- picture this, come home from jury duty, take the
8 subway, you are getting home, look at a guy funny. He tases
9 you because he doesn't like the way you look at him. Okay.

10 That guy's name is Fedor, it's Lefty. He did that.

11 And you know what's even crazier? He wasn't
12 embarrassed. He didn't try to hide it. He admitted it.
13 Because he knows. But that's who he is. He doesn't even think
14 there is anything wrong with that.

15 He has lied to anybody who would listen to him. He's
16 lied to his codefendants so he would look good. He lied about
17 Skrilla, about cutting him, even though he says he didn't cut
18 him. He lied so he would build himself up to take credit for
19 it. And he, too, decided to put an iron on somebody's stomach
20 to torture them.

21 Now, they keep talking -- "they" meaning the
22 government -- about the fact that Christian Pabon was the
23 shooter. He was Banga. He was the shooter for 200s. Except
24 if you think back to all of the testimony, the shooting in this
25 case is being done by Castillo, by Lefty, by Fedor all over the

1 place, all the time, they never had a shortage of guns, they
2 never had a shortage of victims, and all of those shootings and
3 victims and torture had nothing whatsoever to do with Christian
4 Pabon.

5 The cooperation agreement that they signed, each one
6 of them signed, I guess you can call that like the criminal's
7 best friend. They each pled guilty to many, many crimes that I
8 am not going to get into, and all of them were facing life to
9 decades, if not life, in jail. And it is obvious they want to
10 get out. They hope to get out. And the government says
11 they -- the government asked each and every one of them, there
12 are no promises, you benefit more by telling the truth than by
13 lying. The judge will know in the letter all the good things
14 and the bad things you have done. The jury verdict will not
15 affect whether or not you get the letter. It's all very nice
16 and all is true, except who in God's name would enter into a
17 cooperation agreement unless you believe you were going to get
18 a benefit? Otherwise the system would just fall apart. Think
19 about it. Who else is going to say I will plead to everything.
20 I'm going to get coverage for 80 robberies. I'm going to get
21 coverage for all breakings I have done all over the country.
22 I'm going to get coverage. It's going to be covered in my
23 cooperation agreement. Who would do that unless there is a
24 benefit, unless they are going to get something, unless they
25 believe that they are going to get out at that point ?

1 But the key here, and the government also asked does a
2 verdict affect whether you get the letter? No. This is the
3 most important thing about a cooperation agreement. The
4 government decides if they are truthful. I don't decide if
5 they are truthful. You don't decide if they are truthful. The
6 judge doesn't decide if they are truthful. The government
7 decides, based on their evaluation of the testimony whether or
8 not they, the government, should write a 5K letter for that
9 person, and that is based on if they think it is truthful.
10 They decide if somebody violates or breaches the agreement.

11 But guess what? We know as we sit here today there is
12 no dispute that all three of those witnesses each, on multiple
13 occasions, breached and violated their agreements. They all
14 admitted to lying or committing crimes during their proffer
15 sessions. They all admitted to being involved during their
16 getting a cooperation agreement, and they all admitted to
17 violating after they signed the cooperation agreement. And not
18 once did the government rip it up. The government said to
19 them, okay, if you are lying, we are going to rip it up. Has
20 it been ripped up? No. The government says if you commit
21 crimes in jail we are going to rip it up. Has it been ripped
22 up? Absolutely not.

23 Think about the audacity of P-Mula. He turns himself
24 in to try to become federal property so he can get immunity, so
25 he can then become a cooperator; and as he does it, he is

1 sitting there talking to prosecutors with marijuana inside of
2 him that he put inside of his butt himself so he knew when he
3 goes in to jail, he will have his stash with him. Think about
4 that kind of person. Think about that kind of mentality, that
5 kind of planning ahead. It's smart, maybe crazy, but it's
6 smart, and it is going -- so as he talked to them, he is
7 violating. As the words are coming out, he is a walking
8 violation of what they are telling him to do. Every single day
9 they are smoking, they are fighting, they have weapons, they
10 are using cell phones, they are having three-way calls. No
11 matter how many times the government says don't do it, they do
12 it. No matter how many times the government says if you breach
13 we are going to rip it up, they do it. What happens? Okay .
14 You get caught. I'm sorry. I won't do it again. Get caught a
15 second time. Oh, gee. I'm sorry. I won't do it again. How
16 many times do you have to violate before the government says
17 enough, we are going to rip it up? We don't want you. We
18 won't use you. We are not going to give you a cooperation
19 agreement. Well, apparently every day a violation is not
20 enough for the government.

21 And the most crazy thing is here the government is
22 going to say, well, these guys, not only are they listening to
23 what we say to them, but they are not violating. And the most
24 important thing is, these witnesses are talking to each other.
25 there are seps, there are separation orders between those

1 government chose to say, you know what, no matter how many
2 times you violate I'm still going to write that 5K letter for
3 you.

4 Government has said, and they are probably going to
5 say again, we are not saying you should like these guys. We
6 are not saying you should have dinner with them. We are saying
7 you should just believe them because, the government is going
8 to say, if they tell the truth, that benefits them. But
9 remember what I said, the truth as determined by the
10 government. Again, look at Lopez's own words on his neck.
11 "Trust No One."

12 I began by saying this was not a complicated case, but
13 it was difficult. It's easy. We all know that three people
14 were shot. That's a tragedy. You have reasons to doubt here.
15 You have reasons, very specific reasons to disregard Castillo
16 and Fedor and Lopez.

17 You know, over the course of this case, and I am sure
18 in your lives, you have heard the phrase "beyond a reasonable
19 doubt." You hear it a lot in TV. Listen to the judge. The
20 judge will tell you what it is. You also heard "presumption of
21 innocence." That's just not a technical term. That has
22 meaning in this courtroom and it has meaning to you and to the
23 judge. And, again, the judge will tell you what that means.

24 But right now, look at Christian Pabon. He is
25 innocent now.

1 witnesses to make sure they don't talk to each other. The
2 government tells them on each and every occasion don't talk to
3 each other, don't talk about cooperation, don't say it, don't
4 let anybody know. And last month, not 2016, '17, '18, last
5 month, in April of 2022, they spoke to each other about this
6 case. Now, the government asked them: Well, you didn't talk
7 about the substance, did you? Oh, of course not, no. We only
8 talked about who is testifying against Christian Pabon. Has
9 the government broken, has the government decided to rip it up?
10 No, they have not.

11 The government is going to say, well, if these people
12 are going to lie, they would lie better. They would make the
13 defendant more involved. But you know what? They can't lie
14 better because they don't know exactly what anybody else is
15 going to say about them. So they have to lie in ways that they
16 can't get caught. They have to insulate themselves by having
17 no one else around when they say the defendant made statements
18 to them. They have to collude by using the three-way phone
19 call and in person.

20 The government has already said that they don't choose
21 their witnesses and Mr. Pabon basically chooses his witnesses
22 because he committed crimes with them. Well, that's just not
23 really true because they, the government, chose their
24 witnesses. The government chose to give them cooperation
25 agreements. The government chose to not rip them up. The

1 When I sit down? He is innocent.

2 When the government gets up and talks? He is
3 innocent.

4 When the judge begins to charge and read the
5 instructions to you? He is innocent.

6 When you get up and walk in the back to begin your
7 deliberations into the jury room? You have to start by saying
8 he is innocent.

9 If you look at the evidence, if you get past maybe
10 your gut feeling, if you get past the speculation, if you get
11 past the difficulty of the sympathy of the situation , and if
12 you focus on reasonable doubt, I think you will do the right
13 thing. And the way you can really tell yourself that, just at
14 this point, just pick him up, get him out of that seat. Put
15 somebody in that seat who you love. Put somebody in that seat
16 who you care about. Okay? And how seriously would you focus
17 on reasonable doubt if somebody was there who you loved? Would
18 you give that person who you loved the presumption of
19 innocence?

20 Can you honestly say as you sit here today that you
21 could, in good conscience, believe Castillo, Lopez, and Fedor?
22 Do you honestly say that if your person who you love is sitting
23 there and those three guys came in and testified against
24 someone that you love, that you could rely on that? Would that
25 be sufficient?

1 You know, Ms. Macedonio last week told you and
2 acknowledged the tragedy of murder. Please do not turn one
3 tragedy of murder into two tragedies. It is tragic that
4 Mr. Rivera was killed, but also it would be equally tragic if
5 the wrong guy is convicted of this.

6 The government talks after me. I'm going to sit down
7 any second now, and I'm going to ask you to do me a favor. I'm
8 going to ask you to respond as if I could get up and answer
9 again, because I can't. They get the last word. So I am
10 asking you, do the thing that you think I would say to answer
11 what the government has to say, because he didn't murder
12 Mr. Rivera. He did not help anyone else murder him.
13 When it's time for your verdict, I suggest you think
14 about it and say not sufficient evidence, not believable
15 witnesses, not proven, not guilty.

16 Thank you.

17 THE COURT: Thank you, Mr. Schneider.

18 We are going to hear next the "closing" closing of the
19 government, but why don't I give you a ten-minute break. Let's
20 take a quick break, and then we will hear the last closing.

21 (Jury not present)

22 THE COURT: Ten minutes.

23 (Recess)
24
25

1 THE COURT: Who is going to be giving the rebuttal
2 summation?

3 MS. BHASKARAN: I am, your Honor.

4 THE COURT: Do you have an estimate?

5 MS. BHASKARAN: I hope 30 minutes or less.

6 THE COURT: All right. Well, I have a 4:30 matter. I
7 don't think it makes sense to start the general charges for
8 just 15 or 20 minutes. Let's see. All right? It may be that
9 we end when you end. Let's see how long it goes.

10 (Jury present)

11 THE COURT: Please be seated in the courtroom.

12 Ladies and gentlemen, you now will hear the rebuttal
13 summation by Ms. Bhaskaran. This is on behalf of the
14 government.

15 MS. BHASKARAN: Members of the jury, we're almost
16 done. This is the beginning of the end, so I'm just going to
17 be up here for a few more minutes to address some of the
18 arguments that you just heard from Mr. Schneider. But before I
19 do that, I want to make one point completely clear. The
20 defendant has absolutely no burden of proof here. The burden
21 is always with the government. We embrace that burden, and we
22 have met that burden in this case. But the defendant did just
23 get up and make arguments. It is perfectly appropriate for you
24 to listen to those arguments and to scrutinize those arguments,
25 see if they make sense. I'm going to respond to some of the

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1 arguments that you just heard. I'm not going to respond to all
2 of them, because I don't have to. You've sat through this
3 trial, and you are fully capable of seeing these arguments for
4 what they are. They are distractions.

5 MR. SCHNEIDER: Objection.

6 THE COURT: It's your opinion that they are
7 distractions, correct? In your view, they're distractions.

8 MS. BHASKARAN: Yes, your Honor.

9 THE COURT: All right. I'll allow that.

10 MS. BHASKARAN: It is our view that these arguments
11 are distractions. They are designed to focus you on facts of
12 no consequence. They are designed to have you look at the
13 evidence in isolation instead of as a whole. They are designed
14 to take your careful attention away from the mountain of
15 evidence that proves that the defendant is guilty beyond a
16 reasonable doubt.

17 Here's a quick example. The defense just made a big
18 point about how if the defendant was trying to hide, if he was
19 trying to lay low, then why would he cut his hair and brag at
20 the same time to his friends? Well, here's the deal. He's not
21 trying to hide from his friends, the same friends that he
22 admitted to committing a murder. He's hiding from the people
23 who would be looking for him. He's hiding from law
24 enforcement.

25 How about the point that, well, Lefty didn't know his

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1 real name? Well, Lefty knew him by the name that he preferred
2 to go by. He knew him by the name Banga.

3 So the first argument I'd like to address is this
4 argument that you heard that the 200 is not really a gang; it's
5 not an enterprise. It's a fictitious gang. Now, why does the
6 defense think that the 200's not a real gang? Because they
7 don't have an official color? Because they don't have beads?
8 Because they don't have some payment-due system? Because they
9 don't have a registered address or an official headquarters
10 that are indoors?

11 Members of the jury, this argument is meant to confuse
12 you both on the law and on the facts.

13 Let's start with what an enterprise is. Mr. Hobson
14 went through this with you in the morning, but let me
15 summarize.

16 An enterprise is simply a group of people. It has to
17 have some sort of organization or a structure and a core set of
18 people within that group. But it can be informal. That's it.
19 There's no requirement that the gang's rules have to be
20 followed with strict compliance. There's no compliance
21 officer. There's no requirement in the law, and you're not
22 going to hear Judge Stein say, that a gang member can't be a
23 member of two gangs at the same time. There's no requirement
24 in the law that the gang has to have an official color, some
25 elaborate initiation ritual, or anything else like that.

1 Mr. Hobson already walked you through all the evidence
2 that shows you that the 200 was an enterprise. You saw that
3 evidence. You saw the defendant's Instagram posts. You heard
4 the cooperators' testimony. You say Milton Chardon's tattoos.
5 All of that shows that they were a gang united by a common
6 purpose.

7 What was that purpose? They committed crimes,
8 burglaries, robberies. They did shootings together, and they
9 sold drugs. All of that evidence shows you that the 200 had an
10 informal organizational structure. You have the Big 200 on
11 top, like Milton and Raymito. You had the shooters right
12 underneath them, like the defendant. You heard about the rules
13 of the 200. The rules basically came down to this: Show
14 strength through crime. Never snitch.

15 And you know that this group of people stuck together
16 during the conspiracy. Remember the defendant's Instagram
17 posts, where he pledges his allegiance to the 200 to this day.

18 Now, let me address this related argument here. The
19 defendant is a Blood. You heard defense counsel say to you
20 just now the defendant was a member of a different gang. Now,
21 think about that. If the defendant was a member of a different
22 gangs, then he knows what it means to throw up gang signs. You
23 don't just do that for fun. You don't just do that to play
24 gangster on TV. You know what that means.

25 Now, the argument here seems to be that you can't be a

1 evidence in isolation. You have to look at it as a whole. His
2 username has the word 200 in it. He has pictures where he's
3 standing next to the founder of the gang, the guy with the 200
4 tattooed on his neck, where they're all making gang signs and
5 the defendant is making gun gestures. When you use your common
6 sense, when you look at all of that evidence as a whole, you
7 know that the defendant is not some 200 groupie. He is a
8 member of that gang.

9 What about all the gun signs that he made in the
10 camera? Was he just doing that to look cool? Was he just
11 doing that to look strong? No. He was doing that to advertise
12 the fact that he was the gang's shooter. How do you know that?
13 You saw a loaded gun that the defendant was arrested for in
14 2015 right in the heart of 200 territory. That's another
15 reason why you know that the defendant was the gang's shooter.

16 How about the rap video, the rap video, where they say
17 how Banga's going to snatch your jewelry and snatch your drugs?
18 Was it just a song? Was it just some guys having a good time?
19 No. It's relevant evidence. You know that he actually
20 snatched people's jewelry and their drugs, because you heard
21 from the cooperators that the defendant committed crimes just
22 like that.

23 You see, what the defense is trying to have you do
24 here is to look at the evidence in isolation. But you know
25 that that is not the way things work. You have to look at

1 part of two gangs at the same time. There's nothing in the law
2 that says that you can't be a part of two gangs at the same
3 time. And there's nothing in the facts, there's nothing that
4 you heard about the way the 200 operated that tells you that
5 you can't be a part of two gangs at the same time. In fact,
6 it's the opposite. All of the cooperators, people who had an
7 inside view into the 200, told you that members of the 200 were
8 often members of the 200 and another gang. That's the way it
9 worked. So the fact that the defendant may have been a Blood,
10 that doesn't mean that he couldn't be a 200. Far from it.

11 And let's not forget, you heard from Raymito that
12 loyalty to the 200 was above everything else. Remember that
13 story that Raymito told you about the time when a Blood asked
14 the defendant to shoot Raymito? The defendant had to make a
15 choice: Bloods or 200? Where did his loyalty lie? Who did he
16 choose? He chose the 200 over the Bloods.

17 Let me now address some of the arguments you heard
18 about the defendant's Instagram posts. Now, they just want you
19 to believe that this is just a young man being stupid on the
20 internet, playing gangster on TV, just pretending, just an
21 online personality. They want you to think that we are
22 singling out this defendant because he was just doing stuff
23 online.

24 Members of the jury, the defendant's Instagram posts
25 are not some internet nonreality. You can't look at this

1 things as a whole.

2 Think about it. Think about a 100-piece puzzle of an
3 elephant. The puzzle pieces are all in the box. You can take
4 out one puzzle piece and say, hey, that's just some gray piece
5 of cardboard with some jagged edges. You take out another
6 piece, say, oh, that's just another gray piece of cardboard
7 with some jagged edges. But that's not how it works. You have
8 to put all the puzzle pieces together. All 99, 100 puzzle
9 pieces together. And when you do that, look at the evidence as
10 a whole, you see that there's an elephant; you see that the
11 defendant was a member of the 200.

12 You also heard a lot of argument about boasting. This
13 was just boasting. This is just bravado. This is just people
14 trying to look tough on the street. Let's talk about that a
15 little bit.

16 So, one of the arguments that the defense counsel made
17 was something that Lefty said. Lefty said that there, that he
18 was told that they burnt the van. And they say, well, this
19 must just be evidence that they're all just boasting. So why
20 don't we just pull up that testimony.

21 Ms. Abrams, can you pull up page 842 of the
22 transcript, lines 10 through 13.

23 While we get this up on the screen, I'll just read it
24 to you, and you can always refer back to it when you're doing
25 your deliberations.

1 So, Lefty was asked:
2 "Q. Do you remember telling the government that Banga told you
3 after this person was killed that the van was burned up?"
4 And Lefty said:
5 "A. It was Necio and Banga that was talking at the moment."
6 And then the question was:
7 "Q. That the van was burned?"
8 And then Lefty said:
9 "A. He was talking about the van was burned and they shot in
10 the middle of the street."
11 So let's talk about the van being burned. Now, they
12 ask a follow-up question about what he meant by the fact that
13 the van was burnt:
14 "Q. Do you mean that the van was set on fire?
15 Or was the van burned because it was caught on camera
16 as it was? You don't actually know what was meant by that.
17 And by the way, Lefty's testimony that they believed
18 they didn't get caught by the cameras because a bus was
19 blocking them, check out Government Exhibit 903. It's a view
20 of St. Nicholas Avenue from across the street. And you'll see
21 that there's a bus that is blocking the scene. Ms. Abrams has
22 pulled it up for you. Take a look there. You can see the bus
23 on the far corner of the screen that's parked there, standing.
24 (Video played)
25 MS. BHASKARAN: The bus is still there.

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1 sense.
2 So, first, the defendant would just happen to be
3 friends with Ito, the second shooter, and just happen to post
4 "free Ito" on Instagram.
5 The defendant would just happen to throw 200 gang
6 signs on Instagram even though he wasn't a member of 200.
7 That's just a coincidence.
8 The defendant's cell phone, by sheer happenstance,
9 just happened to be found broken on the pavement, surrounded by
10 spent shell casings, right where the shooters stood when they
11 killed Orlando Rivera.
12 The second shooter on the video just happened to have
13 the same distinctive hairstyle that the defendant had at the
14 time. The second shooter just happened to have the same
15 forehead, just like the defendant. The second shooter just
16 happened to have the same jaw line like the defendant, the same
17 facial hair like the defendant.
18 It was also just a coincidence that the defendant
19 happened to cut that distinctive hair off shortly after the
20 murder.
21 Was it just a coincidence that the defendant just
22 happened to have the same pants as the shooter? And on top of
23 all of that, the defendant just happened to take credit for a
24 murder he didn't commit? Not once but over and over and over
25 again?

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1 (Video played)
2 MS. BHASKARAN: See the bus moving.
3 (Video played)
4 MS. BHASKARAN: So you might be asking yourself after
5 all this argument about this boasting, was someone just taking
6 credit for a crime they didn't do?
7 Keep this in mind. This is how you know that that
8 wasn't boasting. It would be one thing if this murder was
9 committed by a single person and no one saw it. But that's not
10 what happened. You saw the video. There were two shooters and
11 at least two other gang members who came to watch. You can't
12 lie about committing a murder when your fellow gang members
13 witnessed it. If the defendant was just boasting about killing
14 someone, he would have been called out for it. But that's not
15 what happened here. The defendant was able to brag about his
16 role in the murder because his fellow gang members were there
17 to see it happen, and that's how he gained status in the gang.
18 Your common sense tells you that the defendant could not have
19 just been boasting about a shooting that he did not go. This
20 was not just talk. It was action.
21 Another thing you should keep in mind here is that if
22 the defense's arguments are right, here's one thing that has to
23 be true: The defendant must be the unluckiest man in the
24 world. Think about all of the unbelievable coincidences that
25 would have to be true for the defense's arguments to make any

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1 Members of the jury, is all of that supposed to be a
2 coincidence, just a matter of truly terrible luck? The
3 evidence tells you that that is not true. Your common sense
4 tells you that that is not true. The defendant is not the
5 unluckiest man in the world. The evidence looks devastating
6 because it is devastating.
7 The defense also spent a lot of time talking to you
8 about what is not in evidence. So let's talk about this for
9 just a moment.
10 As the defense alluded to, we expect that Judge Stein
11 will instruct you that the government is not required to use
12 any particular investigative technique and that whether the
13 government chose one investigative technique over another is
14 not a question before you. The question before you is whether
15 the evidence that has been admitted in this case proves the
16 defendant's guilt beyond a reasonable doubt. The question
17 before you is not whether the defendant should have been
18 arrested shortly after the murder or within two years from the
19 murder, or something else like that. That is not the question
20 before you.
21 So let's talk about some of the evidence that they say
22 that you should have that you don't have and see if it makes
23 any sense. Let's talk about the DNA.
24 Where would that DNA be? On the shell casing s, on the
25 bullet fragments, the ones that blasted from the gun with so

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much heat that all the DNA burns off? The defense made a lot of points about the defendant's DNA at the crime scene or whether there was any DNA. Please keep this in mind. You've heard this a few times. There is no evidence, none, that it was even possible to match the defendant's DNA to the crime scene. Any suggestions, questions that are arguments, those are not, that is not evidence. There is no evidence that it was even possible to match the defendant's DNA to any DNA that was recovered from the crime scene.

How about the other eyewitnesses? Defense counsel complained that you didn't hear from any of the victims or the eyewitnesses that were shot at on October 2. Now, these were the same eyewitnesses who were running for their lives. You saw the video. Were they sticking around to take photos of what was happening? Were they trying to get a good look at the shooters? No. They were running away. They were being shot at. They were trying not to die. As I expect Judge Stein will instruct you, while the government always has the burden, each party has an equal opportunity, or lack of opportunity, to call any witness. So this claim about other witnesses, that's really ultimately just a distraction.

So all the evidence that the defense complains that you don't have, keep this in mind: You don't need it.

You don't need DNA and fingerprints when the defendant's cell phone was found at the crime scene, right by

I'm now going to address some arguments that you heard about motive, and I think as an initial matter, we should just be clear here about what you need to find.

The requirement in the law that you need to find regarding Count Two deals with the purpose of the murder, and this element is satisfied if the defendant committed the murder because he knew it was expected of him by reason of his association with the 200 or because it would maintain or enhance his position or prestige within the gang. And the entire purpose of the murder does not have to be gang-related. Just some part of it has to be gang-related, and there could be dual purposes. There could be more than one purpose. And you heard lots of evidence about what the purpose of this murder was. You heard it from some of the people who were best equipped to tell you what the purpose of the murder was.

You heard from Raymito. What did Raymito tell you? Raymito told you that the purpose of the murder was to get back at a rival gang because Milton Chardon had got jumped.

You also heard it from Lefty. What did Lefty tell you? Lefty told you that he thought that the murder was over a dispute involving a girl. Lefty also explained to you how gang-related disputes often related to women because they ultimately boiled down to disrespect. And whether the way Raymito described it or the way Lefty described it to you, it all comes down to one thing -- disrespect. That testimony was

where the shooter's stood. You don't need eyewitness testimony when you have the security cameras. You don't need -- you have the security cameras. You could see it with your own eyes. They made a point about how, oh, we didn't show the cooperators the videos. That's because we're showing you the videos. You can look at those videos and assess who was there, who was that second shooter.

And let me address this other point that they make about the phone that was found at the crime scene. The point there seems to be that because the other phone has two other names on the phone with the word "Banga" on it, that somehow makes the phone that was found at the crime scene not Banga's.

Well, let's think about that for a second.

First of all, there's no evidence in this case that anyone called the defendant primo Banga or blue Banga, or anything else like that.

And second of all, it could also easily be the case that those were other phone numbers that were used by the defendant. But that ultimately is all a distraction, because here's the only point that matters. The phone that was found at the crime scene had a phone number that was saved as Banga, the name that everyone knew the defendant as -- Banga. It was Banga's phone. It shows you that the defendant was standing right there where those shooters stood when they shot and killed Orlando Rivera.

not inconsistent. It was consistent. They were both talking about a dispute that came down to an issue of disrespect.

You know also from the evidence in this case that the purpose of this murder was gang-related. When the 200 needed to strike at an enemy gang, the defendant was one of the gang members that they turned to. He was the gang's shooter. So by participating in the murder, the defendant's status in the gang went up. That fact also helps satisfy that element.

The murder also raised the prestige of the gang. You heard that from P-Mula. People started to take them very seriously because they knew that these were guys who could kill. That, too, satisfies the element.

All right. I'm going to spend the rest of my time talking to you about the cooperators.

Mr. Schneider spent a lot of time arguing to you that you cannot believe the cooperating witnesses. They want you to believe that they are manipulative monsters who have fooled the government and now are out to fool you. They want you to focus how bad they are, how heinous their crimes are, and how they cut deals with the government just to protect themselves. The argument that they've made to you basically boils down to this:

The cooperators are bad people so you can't believe them.

Now, ask yourself, why are they making this argument to you? They're making this argument because if you believe them, even if you believe just one of them, the defendant is

1 guilty. He's guilty of being a member of the 200, and he's
2 guilty of participating in the murder of Orlando Rivera. So
3 they have to argue that each and every one of the cooperators
4 was lying. They have to argue that they all took the stand,
5 cooked up some lies, and are just trying to fool you.

6 You'll see that this argument does not hold up. In
7 this case, three members and associates of the 200, all with
8 different vantage points, came in and testified about their
9 lives, their crimes, and what they knew about the defendant.

10 You'll assess their credibility the way you assess the
11 credibility of any other witness. Think about their demeanor.
12 You'll think about their body language, the corroborating
13 evidence, and their incentives for testifying.

14 When you do all of that, you may well conclude that,
15 yes, these men, these cooperators, are violent, selfish
16 criminals. But you're also going to conclude that they are
17 selfish, violent criminals who are telling you the truth.

18 Defense counsel made much of the fact that the
19 government entered cooperations with these men, these violent,
20 selfish criminals. But keep this in mind. The government did
21 not choose these people. The defendant did. It would have
22 been much easier if the defendant chose to commit crimes with
23 people with spotless records. But of course, that is not what
24 the defendant did. He chose to commit crimes with experienced,
25 hardened criminals.

1 thing. The only way that they can help themselves is to tell
2 the truth.

3 So let's look at what the cooperators did. They told
4 the government about all their crimes. Then they signed
5 agreements that gave them mandatory minimum sentences, serious
6 mandatory minimum sentences -- for Raymito, 37 years; for
7 Lefty, 20 years; and for P-Mula, at least 20 years.

8 They can all be sentenced to life imprisonment. Why
9 did they sign these agreements? In the hopes that a judge
10 would see that they told the truth and give them a lower
11 sentence.

12 But in the defense lawyers' view, the cooperators'
13 plan was far more convoluted. I think it goes something like
14 this:

15 First, all of them decided that after committing a
16 life of crime, they would all start cooperating against the
17 defendant.

18 Second, they would each tell the government about all
19 of their gruesome crimes, even the ones that they haven't been
20 arrested for, like burning people with hot irons, punching a
21 deaf child, shooting at people. And by giving the government
22 all of this information, they just put all of this terrible
23 conduct, that no one knew about before, before a judge who has
24 the power to sentence these men to up to life imprisonment.

25 Third, cooperators all have to agree to lie about the

1 The defendant chose to attempt robberies with P-Mula.

2 The defendant chose to lend a gun to Lefty so that Lefty could
3 shoot at someone. The defendant chose to beat up and strip
4 naked a guy in Miami that Raymito had a problem with. The
5 defendant chose these people. These were his fellow gang
6 members and associates.

7 Keep another point in mind. No one's asking you to
8 trust these cooperators with important decisions in your
9 personal lives. No one's asking you to trust these cooperators
10 with your most prized possessions or your wedding rings. No
11 one's asking you to have these cooperators watch your kids one
12 evening.

13 The question is whether you can trust these
14 cooperators to tell you about the 200 : How does the 200 work ?
15 Did the 200 commit robberies? What about their burglaries?
16 What about their drug dealing, their shootings? And I submit
17 to you that these are precisely the people you would turn to
18 for those sorts of questions. The question is, using your
19 common sense, when you look at their testimony as a whole, is
20 what they are saying about the 200 and this murder credible?
21 Was it believable?

22 So let's talk for a moment about why you know that
23 they're telling you the truth. I'll start with the incentives.
24 Here's one thing everyone can agree on: Cooperators are
25 selfish; they are trying to help themselves. But here's the

1 defendant's involvement in the 200 and his murder of Orlando
2 Rivera. And at the same time, they all have to coordinate
3 their lies so they match up perfectly, because if they don't,
4 they'll all get caught in a lie.

5 What else does it take to coordinate these lies?
6 These cooperators have to trust each other that the other one
7 will get the lie straight. That's right. P-Mula, the guy with
8 the "trust no one" tattoo on his neck, he has to trust Raymito,
9 the guy who robbed him. He has to trust that Raymito won't get
10 up the stand and mess it up for P-Mula.

11 Fourth, in addition to drumming up lies about the
12 defendant, all of the cooperators have to agree that they
13 should be truthful about the crimes that they committed with
14 each other. Otherwise, they'll be caught in a lie. Let me put
15 that differently: They're all going to lie about the defendant
16 but be honest about all the terrible things that they did.

17 Fifth, they'll have to hope that the defendant's going
18 to go to trial and the government is going to call them to
19 testify.

20 Sixth, they have to hope that their lies won't get
21 exposed on the stand after being cross-examined for hours upon
22 hours by experienced defense counsel.

23 Seventh, they have to hope that their lies are
24 consistent with all the other evidence in this case that
25 they've never seen.

1 And finally, after all that hoping, they would have to
2 hope that maybe they won't get caught in a lie and that the
3 judge would give them a better sentence, making it worthwhile
4 to have confessed to all those other crimes that no one knew
5 about before.

6 Oh, and keep this in mind. All those crimes that they
7 committed in jail, that's all before the judge too, so the
8 judge gets to consider that as well in deciding what sort of
9 sentence they should get.

10 Members of the jury, that seven-step plan that I just
11 described is completely nuts. It's bananas. No rational human
12 being would ever sign up for anything like that, especially
13 when their lives are at stake.

14 What's in the cooperators' heads is something that is
15 far, far simpler. It goes like this: Tell the truth. If I
16 tell the truth, I cannot get caught in a lie. And if I tell
17 the truth, maybe, just maybe, I can get a lighter sentence.

18 So what's the answer to all of that? How do you get
19 around that?

20 There's a suggestion that some of these lies have been
21 coordinated, that they talked to each other, that they're
22 coordinating their testimony. Keep this in mind. There is
23 zero evidence in this case -- zero -- that the witnesses in
24 this case concocted a plan to frame the defendant.

25 So how can you be sure that that's the case?

1 And here's the thing. If they were trying to frame
2 the defendant, they would want to make sure that their stories
3 lined up 100 percent, that every little detail matched up. But
4 defense counsel says that these inconsistencies mean that
5 they're lying. But actually, these inconsistencies tell you
6 that they're telling the truth. One big inconsistency -- well,
7 not big inconsistency, but one inconsistency that defense
8 counsel raised was an inconsistency between the robbery dates
9 or the attempted robbery dates that Raymito mentioned that he
10 did with the defendant. The suggestion there is that Raymito
11 must be lying because he got the dates of those attempted
12 robberies wrong. The important thing here to do is to pay
13 close attention to the testimony.

14 Ms. Abrams, can you pull that up. It's page 241 of
15 the transcript.

16 All right. Take a look at page 241 of the transcript,
17 starting around line 14:

18 "Q. When was the first one?

19 "A. Maybe sometime, like, between November to January. I'm
20 not sure of the month."

21 Is this some crazy inconsistency? Is this some
22 outright lie that was caught?

23 The defendant -- Raymito testified to the best of his
24 ability, and he wasn't even sure about the date. Look at it.
25 You can see the testimony. He says: "Sometime, like, between

1 First, remember the incentives that I just described.
2 If they get caught in the slightest lie, they're in prison for
3 decades.

4 Second, think about not just what they said the
5 defendant but what they didn't say. If the cooperators were
6 trying to sink the defendant, I bet you they could come up with
7 some far, far better lies.

8 Let's think about Raymito. He told you about just
9 some attempted robberies that he did with the defendant. But
10 Raymito has done tens upon tens of robberies in his life, armed
11 robberies. If Raymito's trying to sink the defendant, if he's
12 trying to get him convicted, why wouldn't Raymito put the
13 defendant in one of those robberies?

14 How about P-Mula? P-Mula had to tell you about the
15 murder, and what he had to tell you was something that he heard
16 from Milton. P-Mula also told you that he was very close to
17 the defendant. So if he was lying, if he was trying to sink
18 the defendant, why wouldn't he just say that he had a
19 conversation directly with the defendant?

20 How about Lefty? Lefty has told you that he's
21 committed more robberies, home invasions, and breaking
22 incidents than he can even remember. But you heard him say
23 that he never did a robbery with the defendant. If he was
24 trying to sink the defendant, why wouldn't he throw the
25 defendant in a robbery or two?

1 November to January. I'm not sure of the month."

2 This was over six years ago. If someone told you
3 about something six years ago, someone asked you about an event
4 that happened in your own life six years ago, and you were off
5 by three or four months, does that mean that you're lying? Of
6 course not. That's just the way human memory works.

7 Let's look at the other example that they pointed to.

8 Ms. Abrams, can you go to page 246 of the testimony --
9 this is the second attempted robbery -- lines 4 and 5:
10 "Q. And approximately when did this happen?
11 "A. 2017, like January to like March, around that time, before
12 March."

13 Again, is this some terrible inconsistency that showed
14 Raymito was lying, or is he testifying carefully? Like March?
15 Is "like March" that different from April of 2017? This is
16 just the way human memory works.

17 Now, think about it in your own lives. Remember last
18 week you heard opening statements in this case. Ms. Espinosa
19 gave an opening statement for the government. Ms. Macedonio
20 gave an opening statement for the defense. If each of you
21 independently had to write down what was said, I would imagine
22 you would all remember things just a little bit differently.
23 Does that mean that you're lying? No. That is just the way
24 human memory works.

25 Now, imagine someone asked you that same question six

years from now, eight years from now. If you wrote things down a little bit differently, does that mean you're lying? Of course not. You know that because of your common sense.

Here's another point I'd like to make about the cooperators, which is that the defense is trying to have it both ways. They want you to believe that every bad thing that the cooperators said about themselves are true. So all of those times as the cooperators tortured someone, believe that. All of those times that the cooperators heard that the defendant was one of the shooters who killed Orlando Rivera, don't believe that.

Your common sense tells you that that is not the way things work. The defense can't have it both ways. Witnesses don't just happen to be telling the truth every time they say something that looks bad for them but lie every other time. You know what's actually going on here. They are telling you what they know and they're telling that because if they lie -- P-Mula, Lefty, Raymito -- they spend decades in jail. Now, here's the final reason you know that the cooperators are telling you the truth. Their testimony is corroborated. It's corroborated by each other's testimony and all the other evidence that you have seen during this trial. All of them testified that the defendant was a member of the 200.

And you don't just have to take their word for it.

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the defendant was a 200 and he was one of the shooters that killed Orlando Rivera. You know that the defendant agreed to participate in the affairs of the 200 from all of the social media posts. You know that the defendant was at the shooting that killed Orlando Rivera because his cell phone was found in a pool of shell casings. You know that the defendant was the second shooter because you have the video showing a man who looks just like the defendant -- the same hairstyle, the same forehead, the same jawline, the same pair of pants.

I'm about to sit down, so I want to leave you with a few concluding thoughts.

At the end of the defense's summation, they tried to put a lot of this on you, to make it feel like it's your responsibility if the defendant is convicted. It's not. The defendant is guilty because of what he did. You did not make the defendant guilty. It is the evidence of the defendant's actions -- his words, his actions -- that make him guilty.

Defense counsel also talked a lot about the standard here: Beyond a reasonable doubt. That is the standard. We embrace that standard, and we have met that standard. But please keep this in mind. There's nothing mysterious or magical about the term "beyond a reasonable doubt." It is the burden of proof that is applied every day, in every criminal trial, in every courtroom across this country, since the founding of this country.

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Remember all the evidence from the defendant's Instagram account, Prettiestgangsta200. You have all the pictures and the posts where he's throwing up 200 gang signs and boasting about his membership with the 200. All of the cooperators testified that the defendant was the gang's shooter, that he went by the nickname Banga, the Bang Man, the bang of a gun. You saw the rap video where he looks straight at the camera making gun gestures. You saw the Instagram posts where he's making gun gestures, and you saw the gun that he was arrested with in 2015.

All of the cooperators testified that the defendant was the one who killed the victim, Orlando Rivera. Whether the cooperators heard it from the defendant directly or from another 200, they all heard the same thing: The defendant believed that it was his bullet that killed Orlando. That is powerfully consistent testimony.

And keep this in mind. The cooperators have no idea that the defendant's cell phone was found at the crime scene. They have no idea that that security camera on Hillside Avenue captured the defendant within minutes of the murder. So what do you make of the fact that all of this evidence lines up? What do you make of the fact that the pieces of the puzzle fit together? It's that the cooperators are telling you the truth.

And here's another thing. You don't even need the cooperators' testimony to find beyond a reasonable doubt that

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This hasn't been a long trial, but it is an important one. The defendant was a member of a gang that terrorized neighborhoods in northern Manhattan with its robberies, with its drug dealing and its shootings. And on that calm October evening, the defendant, the gang's shooter, walked up to a street corner, took out a gun, and opened fire at a group of people. The defendant was one of the shooters who murdered Orlando Rivera. He was proud of what he had done, and he thought he could get away with it.

He was wrong. It is time to hold him accountable. Consider the evidence. Consider the law. And most of all, use your common sense. Find the defendant guilty.

THE COURT: Thank you, Ms. Bhaskaran.

Ladies and gentlemen, it's almost 4:30. I have another matter at 4:30. We're going to adjourn for the day. I'm asking you to be here in the jury room, the jury room of courtroom 23B, at 9:15 tomorrow.

There are two parts of this trial left. One is the charge, and two is your deliberations. When all of you are here tomorrow and my deputy brings you in and I see you're here, I'll read the charge to you. It is everyone's expectation that you will have this case for your consideration by midmorning tomorrow.

The court system is going to pay for your lunches. When you come in, my deputy will take your lunch orders. It's

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1 from the cafeteria, so that you don't have to go out during
2 lunch, assuming you're still deliberating.
3 Please be here at 9:15 tomorrow. Enjoy the evening.
4 (Jury not present)
5 THE COURT: All right. Thank you. 9:15 tomorrow
6 morning. 9:15.
7 (Adjourned to May 11, 2022, at 9:15 a.m.)
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1 **DEFENDANT EXHIBITS**
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MR. HOBSON:

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